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Part II

Environmental Protection Agency

40 CFR Part 122, et al.

National Pollutant Discharge Elimination
System Permit Application Requirements
for Publicly Owned Treatment Works and
Other Treatment Works Treating Domestic
Sewage; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Parts 122, 123, 403, and 501
[FRL-5328-9]****National Pollutant Discharge Elimination System Permit Application Requirements for Publicly Owned Treatment Works and Other Treatment Works Treating Domestic Sewage****AGENCY:** Environmental Protection Agency.**ACTION:** Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) today proposes to amend permit application requirements and application forms for publicly owned treatment works (POTWs) and other treatment works treating domestic sewage (TWTDS). TWTDS include facilities that generate sewage sludge, provide commercial treatment of sewage sludge, manufacture a product derived from sewage sludge, or provide disposal of sewage sludge. Today's notice solicits public comments on the proposed regulations, proposed forms and instructions.

The proposed regulations and Form 2A would replace existing Standard Form A and Short Form A to account for changes in the NPDES program since the forms were issued in 1973. This proposal would consolidate POTW application requirements, including information regarding toxics monitoring, whole effluent toxicity (WET) testing, pretreatment facility and hazardous waste contributions, and combined sewer overflows (CSOs). The most significant proposed revisions would require toxic and WET monitoring by major and pretreatment POTWs and monitoring of 17 parameters by minor POTWs. EPA believes this information is needed in order for permitting authorities to issue permits that will adequately protect the Nation's water resources.

The proposed regulations and Form 2S would replace the existing Interim Sewage Sludge form. The most significant proposed revision would require POTWs and other TWTDS to analyze sludge and provide data for ten metals, nitrogen, and phosphorus. Class I sludge management facilities (pretreatment POTWs) would also have to analyze for most of the priority pollutants. The Interim Form only requires the use of existing data. EPA believes the additional information is needed in order for permitting authorities to issue permits that meet the requirements of the sewage sludge use or disposal regulations.

The costs associated with the new requirements are not significant since many permitting authorities require essentially the same information already through a variety of reporting mechanisms. The proposed rule allows waivers where information is already available to the permitting authority. The new forms would make it easier for permit applicants to provide the necessary information with their applications and would minimize the need for additional follow-up information requests from permitting authorities. The proposal is estimated to reduce the current annual reporting and record keeping burden by about 9,000 hours, or ten percent. EPA is interested in identifying additional ways to further reduce the burden associated with the applications and is seeking comment on the use of electronic data transmission and other streamlining opportunities.

DATES: In order to be considered, comments must be received on or before March 5, 1996.

ADDRESSES: Comments should be addressed to Municipal and Sludge Application Rule Comment Clerk, Water Docket MC-4101; United States Environmental Protection Agency, 401 M Street SW., Washington, DC, 20460. Commenters are also requested to submit an original and 3 copies of their written comments as well as an original and 3 copies of any attachments, enclosures, or other documents referenced in the comments. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. All comments must be postmarked or delivered by hand by March 5, 1996. No facsimiles (faxes) will be accepted.

EPA will also accept comments electronically. Comments should be addressed to the following Internet address: ow-docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Electronic comments will be transferred into a paper version for the official record. EPA will attempt to clarify electronic comments if there is an apparent error in transmission. Comments provided electronically will be considered timely if they are submitted electronically by 11:59 p.m. (Eastern time) March 5, 1996. EPA is experimenting with electronic commenting, therefore commenters may want to submit both electronic comments and duplicate paper comments. This document has also been placed on the Internet for public review

and downloading at the following location: gopher.epa.gov.

FOR FURTHER INFORMATION CONTACT: For information on Form 2A and municipal wastewater permitting issues in this notice, contact George Utting, (202) 260-9530, Permits Division (4203), United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C., 20460.

For information on Form 2S and sewage sludge permitting issues in this notice, contact Wendy Bell, (202) 260-9534, Permits Division (4203), United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C., 20460.

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I. Background

A. Purpose of Today's Proposal

Today's notice proposes to amend NPDES permit application regulations for publicly owned treatment works (POTWs) and other treatment works treating domestic sewage (TWTDS). Proposed Form 2A would apply to POTWs and replace Standard Form A and Short Form A, which were developed in 1973. Proposed Form 2S would be used to report sewage sludge information consistent with applicable permit program regulations and technical standards for sewage sludge use or disposal. Proposed Form 2S would be used by POTWs and other TWTDS.

EPA proposes these application regulations and forms for several reasons. First, this rulemaking addresses changes to the NPDES program since 1973. The NPDES program applicable to

POTWs has changed significantly since that time, specifically in the areas of toxics control, water quality-based permitting and pretreatment programs. Second, the proposal would consolidate application requirements from existing regulations into a "modular" permit application form, thereby streamlining and clarifying the process for permit applicants. Third, these revisions will provide permit writers with the information necessary to develop appropriate NPDES permits consistent with requirements of the Clean Water Act and thus also help to ensure for permittees the effectiveness of the permit as a shield for purposes of compliance with the CWA. Fourth, the Agency seeks to reduce redundant reporting by allowing waivers where information is already available to the permitting authority and, further, to provide a platform for electronic data transmission.

The proposed revisions would result in a net reduction in overall reporting burden hours nationwide. The burden reduction for the combined municipal and sludge proposed application requirements is calculated to be nearly 9,000 hours annually, from a total existing annual burden of 80,000 hours. This is due in part to the reduced number of WET tests calculated to be performed by POTWs. It is also due to the reduced number of major respondents that would be required to comply with the proposed regulations as compared to the number of major respondents estimated to complete the existing municipal application forms (i.e., different criteria apply). Finally, the respondent burden for CWA sec. 308 application requests also would be expected to decrease, because much of the information currently obtained through routine and medium sec. 308 requests is reflected in the proposed rule.

This burden reduction accounts for nearly 9,000 of the 287,000 hours projected to be saved, for an overall reduction of twenty-five percent for the NPDES program. The total savings will be achieved through revisions to this form, revisions to stormwater application forms, revisions to the industrial application form 2C, and reductions in discharge monitoring reports (DMRs). It is anticipated, however, that most of the NPDES burden reduction will involve reduced burden for DMRs, which currently account for greater than eighteen million annual burden hours.

At the same time, this proposed rule would result in increased net costs to municipal and sludge applicants of more than four million dollars per year

on a nationwide basis. It is calculated that this proposal would apply to more than 7,000 permit applications per year, with a total universe per year of more than three thousand applicants each for municipal and sludge permitting. Costs vary considerably from application to application. Thus, the average five-year cost per application would range from an average of about \$450 (less than \$100 per year) for small municipalities to an average of about \$4,000 (less than \$1,000 per year) for larger municipalities. Most of the costs associated with this proposal would be due to proposed pollutant data requirements for municipal permittees.

The Agency believes that the proposed increased costs are appropriate because certain data may be necessary to the permit writer in order to allow the issuance of permits that provide a "shield" to permittees (see discussion, "Permit as a Shield," at I.F.), and to ensure compliance with Clean Water Act requirements, especially water quality standards.

B. History of the NPDES Permit Program

1. National Pollutant Discharge Elimination System

a. Federal Water Pollution Control Act Amendments of 1972

The Clean Water Act (CWA) was enacted in 1972 (Federal Water Pollution Control Act Amendments of 1972) to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. CWA sec. 101(a), 33 U.S.C. 1251(a). The immediate predecessor to the CWA was the Water Quality Act of 1965 (Pub. L. 89-234). The 1965 Act directed each State to develop water quality standards for all interstate navigable waters. States had difficulty developing these standards, however, and by 1971 barely half the States had developed complete programs. States that did develop standards had difficulty implementing them because the 1965 Act lacked a workable mechanism for translating State water quality standards into limits enforceable against individual dischargers.

In response to this dilemma, Congress passed the CWA. Section 402 directed EPA to assume a substantial role in directing and defining the nation's water pollution control programs. The Act established the National Pollutant Discharge Elimination System (NPDES) permit program to be administered by EPA and the States with EPA approval. The NPDES program prohibits the discharge of any pollutant into waters of the United States except when

authorized by a permit (sec. 301(a) and 402).

Section 301 significantly changed the methods used to set and enforce standards to abate and control water pollution. First, it introduced the concept of minimum technology-based discharge requirements. Initially, sec. 301(b)(1)(B) required POTWs to achieve effluent limitations based on secondary treatment. The "degree of effluent reduction achievable through application of secondary treatment" was to be defined by the Administrator, pursuant to sec. 304(d)(1). Later, POTWs were to achieve a more stringent level of technology-based discharge limits based on best practicable waste treatment technology (BPWTT) under sec. 301(b)(2)(B). That section was repealed in 1981. Finally, POTWs were required to comply with any more stringent limitations necessary to implement any applicable State water quality standards. Water quality-based discharge limitations were imposed by sec. 301(b)(1)(C).

To achieve the effluent reductions called for in sec. 301, sec. 402 provides for the NPDES permit program to implement and enforce these controls. NPDES permits may be issued on the condition that authorized discharges meet the applicable requirements of the CWA, including: technology-based limitations; water quality-based limitations; new source performance standards; toxic and pretreatment effluent standards; inspection and monitoring provisions; and ocean discharge criteria. EPA was authorized to issue regulations to implement these provisions throughout the CWA. NPDES permit requirements are based either on regulations promulgated under these sections or, in the absence of regulations, on the permit writer's best professional judgment (BPJ), when necessary to carry out the provisions of the CWA. CWA sec. 402(a)(1), 33 U.S.C. 1342(a)(1). The CWA also authorized States to assume responsibility for issuing NPDES permits, provided that State programs meet the requirements of sec. 402(b) and regulations published under sec. 304(i)(2) (previously, sec. 304(h)(2)). EPA promulgated the original regulations outlining the NPDES program on December 22, 1972 (37 FR 28390) and May 22, 1973 (38 FR 13528).

The CWA required the Administrator to promulgate guidelines for "establishing uniform application forms and other minimum requirements for the acquisition of information" from point sources, within 60 days after its enactment. CWA sec. 304(i)(1) (previously, sec. 304(h)(1)). EPA

promulgated short forms to enable dischargers to meet deadlines imposed by the CWA, on February 27, 1973 (38 FR 5279). These included Short Form A, which was to be completed by all POTWs. EPA promulgated standard forms to gather additional information from certain dischargers, on July 24, 1973 (38 FR 19894). This rule included Standard Form A, for POTWs meeting certain criteria relating to size, population, and industrial contributions. At the time, there were no effluent standards for POTWs. Secondary treatment regulations, setting limits for biochemical oxygen demand, suspended solids, fecal coliform, and pH, were not promulgated until August 17, 1973 (38 FR 22298).

b. Changes leading to the Clean Water Act of 1977

The first major change in the NPDES program's focus was the shift from conventional to toxic pollutants. Though sec. 307(a) required EPA to identify and establish effluent standards for toxic pollutants, the thrust of the "first round" of NPDES permits was to control conventional pollutants, rather than to identify and establish standards for toxic pollutants. As the NPDES program was implemented, several interested parties criticized the Agency's lack of progress in establishing sec. 307(a) standards. Among the terms in settlement of litigation in 1976, EPA was to establish technology-based standards as necessary to address 65 compounds or classes of compounds for certain industries. See *NRDC v. EPA*, 8 E.R.C. 2120 (D.D.C. 1976). This list of 65 compounds is now contained in 40 CFR 401.15.

In 1977, amendments to the Clean Water Act refocused Agency priorities on the control of toxic pollutants. As a result, the NPDES program expanded beyond control of conventional pollutants to control of nonconventional pollutants, such as ammonia, chlorine, and nitrogen, as well as certain metals and organic chemicals. The list of the 65 compounds was incorporated into sec. 307 when the CWA was amended in 1977 (see Committee Print Number 95-32, Hearings before the Subcommittee on Investigations and Review of the Committee on Public Works and Transportation, U.S. House of Representatives, pages 399-405) and subsequently was published on January 31, 1978 (43 FR 4109). The compounds on the list were chosen according to various criteria, including known occurrence in point source effluents and substantial evidence of carcinogenicity in studies of humans or animal systems. Because the list included broad

categories or classes of chemicals (e.g., chlorinated benzenes, DDT and metabolites, haloethers, etc.), EPA restructured the list in order to evaluate and control the specific pollutants of greatest concern. This produced a list of 129 individual high priority toxic pollutants. As information became available regarding the toxic effects of chemicals on the list, the Agency amended the regulations to establish the current list of 126 "priority pollutants." See 40 CFR Part 423, Appendix A. The 1977 amendments also amended sec. 402(b)(8)&(9) to require that approved State NPDES programs provide for administration of the pretreatment program to regulate industrial users of POTWs.

In 1979, EPA extensively revised the NPDES regulations to implement changes in the CWA, to conform to recent court decisions, and to clarify and improve existing procedures. The 1979 regulatory revisions eliminated duplication of substantive and procedural requirements between the existing State and Federal NPDES program regulations. Under the final regulations, promulgated on June 7, 1979 (44 FR 32854), the basic substantive and procedural requirements applicable to all NPDES permits were set out in Parts 122 and 124. Part 123 established State NPDES permit program requirements. EPA believed that this new regulatory structure would simplify the regulations and avoid inconsistencies between State and Federal programs. These regulations were challenged judicially and, as discussed below, petitions for review were merged with and resolved in litigation challenging the consolidated permit regulations and subsequent rulemakings.

c. Permit Consolidation and Deconsolidation

To simplify permitting programs, EPA published regulations on May 19, 1980 (45 FR 33290), to consolidate the requirements and procedures for five of the permit programs administered by the Agency: the NPDES program, the Underground Injection Control (UIC) program under the Safe Drinking Water Act (SDWA), State "dredge or fill" programs under sec. 404 of the CWA, the Hazardous Waste Management (HWM) program under the Resource Conservation and Recovery Act (RCRA), and the Prevention of Significant Deterioration (PSD) program under the Clean Air Act. The Agency believed it would be efficient to consolidate environmental permitting programs wherever feasible. This effort sought to

eliminate gaps and overlaps and ensure consistency among the programs.

At the same time, EPA revised certain of the permit application regulations. The Agency created three new application forms: Form 1, Form 2B, and Form 2C. Form 1 requires general information about permit applicants and was required to be completed by applicants for each of the five types of permits under the consolidated permit rule. Form 2B is specific to part of the NPDES program, specifically, permit applications for concentrated animal feeding operations and aquatic animal production dischargers. Form 2C, also specific to the NPDES program, applies to manufacturing, commercial, mining, and silvicultural operations. All three forms incorporated EPA's emphasis on toxic pollutants and other modifications to the CWA and NPDES program regulations.

Following promulgation of the consolidated permit regulations, interested parties complained that the consolidated format made the regulations unnecessarily difficult to use. The division of responsibilities among various entities at the State and Federal levels resulted in additional problems. In practice, consolidated processing of multiple permits was rare because the various permit programs regulated different activities with different standards and thus imposed different types of requirements on permittees. Subsequent petitions for judicial review of various aspects of the consolidated permit regulations were consolidated with pending petitions for review of the June 7, 1979, final NPDES regulations in the United States Court of Appeals for the District of Columbia Circuit.

As part of an agreement to resolve that litigation, and in response to problems encountered by permit writers, EPA deconsolidated the five permitting programs on April 1, 1983 (48 FR 14146). The NPDES regulations remain in Part 122 (substantive permit requirements) and Part 123 (State program requirements). Part 124 (common permitting procedures) remains applicable to all of the programs. On September 1, 1983 (48 FR 39611), EPA promulgated additional revisions covering a number of issues affecting the consolidated permit program.

After deconsolidation, the NPDES program continued to use Forms 1, 2B, and 2C. In 1984, EPA amended Form 2C to include toxic pollutant sampling and, in 1986, promulgated two new NPDES forms: Form 2D, for use by new manufacturing, commercial, mining and silvicultural operations; and Form 2E,

for use by facilities that do not discharge process wastewater (51 FR 26982, July 28, 1986). The Agency did not, however, revise either Standard Form A or Short Form A. Thus, these two forms do not request information to reflect all of the CWA's current requirements, including the emphasis on the control of toxic pollutants.

d. The Water Quality Act of 1987 and Water Quality-Based Permitting

On February 4, 1987, the CWA was amended again by the Water Quality Act (WQA) of 1987 (Pub. L. 100-4). The WQA included several provisions that affect POTWs and other TWTDS. Statutory amendments included requirements addressing sewage sludge, storm water, and water quality-impaired streams. In response to the 1987 amendments, EPA published technical revisions to amend the NPDES regulations on January 4, 1989 (54 FR 246). EPA promulgated final regulations for State sludge management programs on May 2, 1989 (54 FR 18716). As part of the WQA implementation effort, the Agency published rules implementing CWA sec. 304(l) and other changes to surface water toxics regulations on June 2, 1989 (54 FR 23868). This 1989 rulemaking recognized the Agency's commitment to protect water quality through water quality-based permitting.

The 1987 amendments provided that States were to adopt numeric water quality criteria for the "priority pollutants" listed pursuant to sec. 307(a)(1), if discharge of those pollutants could reasonably be expected to interfere with a designated use under State water quality standards. States were to adopt these criteria whenever they reviewed, revised, or added new water quality standards. Subsequent review of all States indicated that 43 States had adopted the criteria as required. Fourteen States, however, were not fully in compliance with the 1987 amendments as of December 22, 1992. On that date, EPA promulgated chemical-specific numeric criteria for those States, as necessary, to comply with the CWA (57 FR 60848).

On July 22, 1994, EPA published its whole effluent toxicity (WET) policy (59 FR 37494). The policy is intended (i) to promote uniform, nationwide compliance with statutory and regulatory requirements for the control of WET, and (ii) to assist permit writers in implementing these requirements. The policy reflects EPA's experience in implementing the 1989 water quality-based permitting regulations at 40 CFR 122.44(d). The WET policy provides for: evaluation of acute and chronic WET water quality criteria attainment at the

edge of the respective mixing zones; review of all major dischargers for reasonable potential to cause or contribute to exceedance of WET water quality criteria; consideration of available WET testing data and other information in evaluating whether a discharger has reasonable potential to cause or contribute to exceedance of WET criteria; imposition of effluent limitations to control WET upon finding reasonable potential to cause or contribute to exceedance of WET criteria; imposition of WET monitoring conditions where appropriate for dischargers that do not have effluent limitations to control WET; schedules for compliance with WET effluent limitations; application of water quality permitting regulations to apply without regard to the pollutant(s) that may be causing toxicity, including ammonia and chlorine; and application of the water quality-based permitting regulations to all dischargers, including POTWs.

2. Background of the Pretreatment Program

Congress recognized that regulating only those pollutant sources discharging effluent directly into the nation's waters would not achieve the CWA's goal to eliminate pollutant discharges. Consequently, the CWA required EPA to promulgate nationally applicable pretreatment standards that restrict the introduction of pollutants from industrial users of POTWs, also called indirect dischargers.

EPA first issued pretreatment standards on November 8, 1973 (38 FR 30982). Following the 1977 CWA amendments, EPA revised those regulations and issued the "General Pretreatment Regulations for Existing and New Sources of Pollution," on June 26, 1978 (43 FR 27736). The regulations were revised again on January 28, 1981 (46 FR 9439). As amended, the pretreatment regulations at 40 CFR Part 403 require that "any POTW (or combination of POTWs operated by the same authority) with design influent flow rates greater than five million gallons per day (mgd) and receiving from industrial users pollutants that pass through or interfere with the operation of the POTW" establish pretreatment programs as part of its NPDES permit. In addition, POTWs with design influent flow rates of less than five mgd may be required to develop pretreatment programs if non-domestic wastes cause upsets, sludge contamination, or violations of NPDES permit conditions or if their industrial users are subject to national pretreatment standards. EPA estimates

that 1,500 treatment facilities are required to administer such pretreatment programs.

The National Pretreatment Program's primary goal is protection of POTWs and the environment from the effects of discharges into municipal sewerage systems. This protection is achieved principally through regulating industrial users that discharge toxic pollutants or unusually large amounts of conventional pollutants into municipal systems. The General Pretreatment Regulations control pollutant discharges into POTWs in several ways. First, prohibited discharge standards apply to all industrial and commercial establishments connected to POTWs. 40 CFR 403.5. These standards include general prohibitions against the introduction of pollutants into POTW that may pass through the POTW or interfere with the operations of the POTW, as well as specific prohibitions relating to the introduction of pollutants which have the potential to create hazards for the POTW, such as heat, explosivity, and corrosivity. Second, categorical pretreatment standards apply to discharges by industrial users in specific industrial categories determined to be significant sources of toxic pollutants. Categorical standards are designed to ensure that wastewaters from direct and indirect industrial dischargers are subject to similar levels of treatment.

Finally, 40 CFR 403.5(c) requires POTWs to develop and enforce local limits designed to ensure that industrial users meet both the general and specific prohibitions. Thus, local limits are intended to ensure that POTWs are able to comply with NPDES limits, including water-quality based standards. Local limits are Federally enforceable pretreatment standards, as defined by sec. 307(d). In cases where local limits are more stringent than categorical standards, the more stringent limit applies and is enforceable as a Federal standard.

On July 24, 1990, EPA promulgated amendments to the NPDES and General Pretreatment Regulations to reflect the findings of the "Report to Congress on the Discharge of Hazardous Wastes to Publicly Owned Treatment Works," also known as the Domestic Sewage Study (DSS) (55 FR 18716). The rule contained a number of regulatory changes intended to improve control of hazardous wastes discharged to POTWs, including revisions to the application requirements for POTWs at 40 CFR 122.21(j). Paragraphs 122.21(j) (1)–(3) contain whole effluent toxicity (WET) testing requirements, and paragraph 122.21(j)(4) requires POTWs with

approved pretreatment programs to submit a written technical evaluation of the need to revise local limits. Today, EPA proposes to revise the WET reporting requirements at § 122.21(j) and to revise the provision for the local limits technical evaluation by making this a POTW pretreatment program requirement rather than an application requirement based on concerns about the timing of such evaluations relative to imposition of water quality-based effluent limitations in POTW permits.

3. Program To Control Combined Sewer Overflows

Combined sewer systems (CSSs) are wastewater collection systems that transport both sanitary wastewater and storm water to POTWs. During dry weather, CSSs carry sanitary wastes, as well as industrial and commercial discharges, to POTW treatment plants. In periods of heavy wet weather flows, transported sewer waters can overflow the regulator structures, which normally convey waste streams to the treatment plant, and discharge into adjacent surface waters. These discharges are called "combined sewer overflows" (CSOs). CSOs often contain high levels of suspended solids, bacteria, pathogens, and, in many instances, heavy metals and other toxic pollutants, floatables, nutrients, oxygen-demanding materials, oil and grease, and other contaminants.

CSOs are point source discharges subject to technology-based treatment requirements and applicable water quality-based standards through NPDES permits. Because they occur prior to the headworks of the POTW treatment plant, these discharges are not considered discharges from a POTW and, consequently, are not subject to secondary treatment requirements.

In the United States, approximately 1,100 (mostly older) municipalities have CSSs, with approximately 11,000 CSO outfalls that periodically discharge untreated sewage, commercial and industrial wastes, and storm water during wet weather events. Almost 85 percent of these municipalities are located in the Northeast and Great Lakes areas. Studies conducted in recent years reveal that CSO discharges are a leading cause of reduced water quality, increased health risks, degraded ecological conditions, and impaired beneficial uses within the Nation's surface waters. Although pollutant concentrations in CSOs frequently are lower than those in untreated average-flow municipal wastewater (due to dilution occurring during high flows), CSOs often result in large pollutant loadings within a short time, potentially

causing beach closures, shellfish bed closures, and fish kills.

In 1989, EPA published the National Combined Sewer Overflow Control Strategy (54 FR 37370, Sept. 8, 1989). On April 19, 1994, EPA expanded on the 1989 strategy by publishing the CSO Control Policy (59 FR 18688). The Policy was developed through negotiated dialogue with State, environmental group, and municipal representatives. The Policy explains EPA's expectations for control of CSOs under the CWA and guides NPDES permitting authorities in issuing permits for CSO discharges. The Policy outlines a phased approach to permitting requirements. Under a Phase I permit, the permittee should document implementation of the nine minimum control measures identified in the Policy as minimum technology-based requirements established through best professional judgment (BPJ) to minimize CSO discharges. The nine minimum controls include review and modification of local pretreatment programs to minimize CSO impacts on receiving waters; maximization of flow to the POTW for treatment; control of solids and floatables; and monitoring to characterize effectively CSO impacts and the efficacy of CSO controls.

The nine minimum controls are measures that can generally be implemented expeditiously to reduce CSOs and their effects on receiving water quality. The Phase I permit should not only require implementation of the nine minimum controls, but should also require development of a long-term control plan. The long-term control plan describes the long-term control strategy developed to ultimately result in compliance with the requirements of the CWA (including attainment of water quality standards). Under a Phase II permit, the permittee implements the specific controls described in the long-term control plan.

C. Sewage Sludge Program

1. Statutory Requirements for Sewage Sludge

In 1987, Congress amended sec. 405 to establish a comprehensive sewage sludge control program. This program regulates the use and disposal of sewage sludge by POTWs and by other treatment works treating domestic sewage (TWTDS). Section 405 required EPA to develop technical standards that would establish sewage sludge management practices and acceptable levels of toxic pollutants in sludge.

Section 405 also provides that NPDES permits issued to TWTDS contain requirements implementing the sewage

sludge standards, unless sewage sludge control requirements are included in a permit issued under one of the following: Subtitle C of the Solid Waste Disposal Act; Part C of the Safe Drinking Water Act; the Marine Protection, Research, and Sanctuaries Act; the Clean Air Act; or EPA-approved State programs that comply with sec. 405. EPA may also issue "sludge-only" permits to TWTDS that are not otherwise subject to the NPDES program or to the other permitting programs listed above.

2. Sewage Sludge Permit Program Regulations

On May 2, 1989, EPA promulgated regulations establishing the legal and programmatic framework for the National Sewage Sludge Program (54 FR 18716). Sewage sludge management provisions are to be incorporated into EPA-issued permits or permits issued by a State under an EPA-approved sewage sludge program. Sewage sludge information reporting requirements were also added to the overall NPDES permit application requirements of 40 CFR 122.21. The new regulations, however, neither listed the specific sewage sludge information requirements nor provided a form for reporting this information. Instead, the rulemaking cross-referenced the existing State Sludge Management Program regulations in Part 501 and required applicants to submit the information listed at § 501.15(a)(2). Paragraphs (i)–(v) of § 501.15(a)(2) require information on the location and permitting status of the TWTDS. Paragraphs (vi)–(xii) require technical information on the applicant's sewage sludge use or disposal practice(s).

On February 19, 1993, EPA amended the sewage sludge permit program regulations (58 FR 9404). This amendment phased in requirements for submitting sewage sludge permit application information. Any TWTDS that is required to have, or that requests, site-specific pollutant limits was required to submit permit application information by August 18, 1993, for the first round of Part 503 standards. Other TWTDS with NPDES permits must submit application information with their next NPDES permit applications. Finally, TWTDS without NPDES permits ("sludge-only facilities") were to submit identification and screening information to the permitting authority by February 19, 1994, for the first round of Part 503 standards.

3. Part 503 Technical Standards

On November 25, 1992, EPA promulgated the sewage sludge use and

disposal standards required by section 405 of the CWA (58 FR 9248, *et seq.*, February 19, 1993). These standards regulate the use and disposal of sewage sludge when it is applied to land, placed on a surface disposal site (including sludge-only landfills), fired in a sewage sludge incinerator, or sent to a municipal solid waste landfill (MSWLF). The standards for each regulated sewage sludge use or disposal method consist of general requirements, pollutant limits, management practices, operational standards, and requirements for monitoring, recordkeeping, and reporting. A number of parties petitioned for review of the regulations and on November 15, 1994, the United States Court of Appeals for the District of Columbia Circuit remanded several aspects of the regulations for modification or additional justification. *Leather Industries of America, Inc. v. Environmental Protection Agency*, 40 F.3d 392 (D.C. Cir. 1994).

4. Implementation of Part 503 Technical Standards

Section 405(f) of the CWA requires that permits issued to facilities involved in sewage sludge generation, treatment, or disposal include Part 503 requirements. Both POTWs and other TWTDS are engaged in sewage sludge generation, treatment, or disposal. However, some of these facilities are not required to obtain NPDES discharge permits pursuant to sec. 402 of the CWA because they do not discharge pollutants to surface waters. These are "sludge-only" facilities.

POTW permits must contain requirements implementing applicable Part 503 technical standards and other Part 122 permit conditions (such as boilerplate conditions and compliance monitoring requirements). POTW permits may also contain any other conditions the permitting authority develops on a case-by-case basis to protect public health and the environment. The permit also establishes a POTW's responsibilities for sewage sludge it sends to other facilities for disposal.

In addition to POTWs, other TWTDS may also be issued permits. These treatment works include facilities dedicated to sewage sludge disposal (i.e., surface disposal sites and sewage sludge incinerators), as well as certain facilities that provide treatment or otherwise change the quality of the sewage sludge before ultimate use or disposal. Sewage sludge has undergone a change in quality if its pollutant concentrations, pathogen levels, or vector attraction properties have been altered sufficiently to change the

sludge's regulatory status under Part 503. Therefore, processes such as stabilization, composting, digestion, heat treatment, or blending with bulking agents or with sewage sludge from another treatment works may all qualify as sewage sludge treatment. (For a more detailed discussion of who must apply for a permit, see the preamble to the May 2, 1989, regulations at 54 FR 18725.)

5. Interim Sewage Sludge Permit Application Form

On November 8, 1993, EPA published a notice about the interim sewage sludge permit application form (58 FR 59260). This interim form was developed to simplify the application process until Form 2S was completed. Section 122.21(d)(3)(ii) requires sewage sludge permit applications to include the information at § 501.15(a)(2), which includes both specific and general information. This interim form ensures that permittees submit the necessary information; helps permittees to understand exactly which requirements apply to them; and makes the application requirements consistent for all permittees.

Proposed Form 2S is based on the interim application form. EPA welcomes comments on the proposed Form 2S, especially from users of the interim form.

D. NPDES Watershed Strategy

The Watershed Protection Approach is an Agency initiative which promotes integrated solutions to address surface water, ground water, and habitat concerns on a watershed basis. It represents EPA's renewed emphasis on addressing all stressors within a hydrologically defined drainage basin, instead of viewing individual pollutant sources in isolation. It is not a new program competing with, or replacing, existing programs; rather, it provides a management framework, within which baseline CWA program requirements, related public health concerns, and newer initiatives can be integrated to address restoration and protection of aquatic ecosystems cost-effectively.

The Watershed Protection Approach has four components. First, it focuses protection and restoration activities within a geographically defined resource, the watershed. Second, it emphasizes the involvement of all affected stakeholders within a watershed; these may include Federal authorities, State governments, local governments, the regulated community, environmental groups, and other interested parties. Third, it stresses the need for appropriate stakeholders to

take comprehensive, integrated actions to address environmental priorities. Finally, it promotes a regular effort to evaluate the success of these actions in protecting and restoring the watershed.

The broad range of NPDES functions and activities gives the NPDES program a key role in implementing the Watershed Protection Approach. On March 21, 1994, the EPA Assistant Administrator for Water issued the NPDES Watershed Strategy. The Strategy represents a first step toward OW's goal of fully integrating the NPDES program into the broader Watershed Protection Approach.

The Strategy outlines national objectives and implementation activities: (1) to integrate NPDES program functions into the broader Watershed Protection Approach; and (2) to support the development of Statewide basin management approaches. To this end, the Strategy identifies six areas that are considered essential for the Agency to support these objectives:

Statewide Coordination—Support the development of Statewide basin management frameworks, coordinate EPA Office of Water grants application and reporting processes, and coordinate interstate basin efforts to facilitate implementation of the Watershed Protection Approach;

NPDES Permits—Implement a methodology for issuing NPDES permits on a watershed basis and emphasize training on watershed protection. Streamline the NPDES permit development, issuance, and review process. Develop and implement innovative approaches to NPDES permitting on a watershed basis, where feasible;

Monitoring and Assessment—Develop a Statewide monitoring strategy; establish point source ambient monitoring requirements, where appropriate, to facilitate the development of monitoring consortia and individual monitoring efforts; and promote comparable data collection, analysis, and utilization by all stakeholders;

Programmatic Measures and Environmental Indicators—Revise existing national accountability measures to facilitate implementation of the Watershed Protection Approach and establish new measures of success that reflect assessment of progress toward short- and long-term watershed protection goals;

Public Participation—Utilize existing NPDES public participation process and development of basin-wide management plans to encourage informed participation by watershed stakeholders,

educate stakeholders about watershed planning efforts, and seek broad public participation in identifying local environmental goals; and

Enforcement—Include emphasis on minor facilities which are discharging to priority basins, within the base national enforcement program, and use 308 authorities, inspections and supplemental environmental projects, where appropriate, to support watershed protection activities.

The Agency views today's rulemaking as an opportunity to further the objectives of the Watershed Protection Approach and the NPDES Watershed Strategy. Both proposed Form 2A and proposed Form 2S request information which support these objectives. These questions are discussed in detail below. The Agency requests comment on what specific additional changes might be made to proposed Form 2A and proposed Form 2S to support the Watershed Protection Approach.

E. Permit Writer's Information Needs Related to Endangered Species and Historic Properties

EPA is considering whether the permit application regulations should require permit applicants to provide available information related to endangered species and historic properties. The Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, creates certain obligations requiring the Agency to consult with other federal agencies (U.S. Fish and Wildlife Service and National Marine Fisheries Services) when EPA carries out, authorizes, or funds an action that may affect threatened or endangered ("listed") species. The National Historic Preservation Act, 16 U.S.C. § 470 *et seq.*, creates certain obligations requiring the Agency to consult with State officials (State Historic Preservation Officers) and/or federal officials at the Advisory Council for Historic Preservation in order for EPA to take into account the effect on historic properties of an "undertaking," as that term is defined by the National Historic Preservation Act. EPA believes that the collection of such information would be useful to regulatory officials in considering permit applications for activities or undertakings that may affect listed species or historic properties, respectively. Absent information in the permit application, EPA may need to collect such information on a case-by-case basis, which could delay the permit issuance process in some instances.

EPA invites public comment on the information that could or should be provided by the permit applicant. Specifically, if EPA established permit

application questions about listed species or historic properties, what kind of information can or should the permit applicant provide? Would it be appropriate to request that the permit applicant identify whether there are known or suspected listed species, including species proposed for listing and designated critical habitat, or historic properties in the area of the POTW discharge (or sludge use or disposal site by a TWTDS) that would be affected by that POTW discharge (or sludge use or disposal by a TWTDS)? How could or should EPA provide applicants with flexibility to assist regulatory officials in the consideration of potential impacts of activities on listed species or historic properties? Though EPA does not propose what type of information related to endangered species or historic properties would be sought in today's proposal, any such information collection requests in the final regulation may affect the costs associated with complying with the permit application regulations, both in terms of financial cost and burden hours. EPA invites public comment on all aspects of efficient federal permitting of POTWs (and TWTDS) consistent with requirements of the Endangered Species Act and the National Historic Preservation Act.

F. Permit as a Shield

Section 402(k) of the CWA, also known as the "shield" provision, provides that compliance with an NPDES permit shall be deemed compliance, for purposes of sec. 309 and 505 enforcement, with sec. 301, 302, 306, 307, and 403 of the CWA (except for any standard imposed under sec. 307 for toxic pollutants injurious to human health). In response to questions raised regarding EPA's interpretation of the scope of the "shield" associated with NPDES permits under the CWA, the Agency issued a policy statement on July 1, 1994, to describe the Agency's current position on the scope of the authorization by EPA to discharge under an NPDES permit and the shield thus associated with permit authorization.

As part of an application for an individual NPDES permit, EPA requires that an applicant provide certain information on its facility. In the case of industrial permit application, this includes specific information about the presence and quantity of a number of specific pollutants in the facility's effluent, as well as general information on all waste streams and operations contributing to the facility's effluent and the treatment the wastewater receives. Present application requirements for

municipal discharges focus primarily on the operation and treatment processes at the municipal treatment works, although some quantitative information is also required.

Historically, EPA has viewed the permit, together with material submitted during the application process and information in the public record accompanying the permit, as important bases for an authorization to discharge under sec. 402 of the CWA. The availability of the sec. 402(k) shield is predicated upon the issuance of an NPDES permit and a permittee's full compliance with all applicable application requirements, any additional information requests made by the permit authority and any applicable notification requirements under 40 CFR §§ 122.41(l) and 122.42, as well as any additional requirements specified in the permit.

In the July 1, 1994, policy statement, the Agency explained that a permit provides authorization and therefore a shield for the following pollutants resulting from facility processes, waste streams and operations that have been clearly identified in writing in the permit application process when discharged from specified outfalls:

(1) Pollutants specifically limited in the permit or pollutants which the permit, fact sheet, or administrative record explicitly identify as controlled through indicator parameters (of course, authorization is only provided to discharge such pollutants within the limits and subject to the conditions set forth in the permit);

(2) Pollutants for which the permit authority has not established limits or other permit conditions, but which are specifically identified in writing as present in facility discharges during the permit application process; and

(3) Pollutants not identified as present but which are constituents of wastestreams, operations or processes that were clearly identified during the permit application process (the permit, of course, may explicitly prohibit or limit the scope of such discharges).

With respect to subparts 2 and 3 of the permit authorization described above, the Agency recognizes that a discharger may make changes to its permitted facility (which contribute pollutants to the effluent at a permitted outfall) during the effective period of the NPDES permit. Pollutants associated with these changes (provided they are within the scope of the operations identified in the permit application) are also authorized provided the discharger has complied in a timely manner with all applicable notification requirements (see 40 CFR 122.41(l) and 122.42 (a) and

(b)) and the permit does not otherwise limit or prohibit such discharges. Section 122.42(b) requires that POTWs must provide adequate notice, including information on the quality and quantity of discharges to the POTW and anticipated impacts on the quantity or quality of effluent discharged by the POTW, of new introductions of pollutants by indirect dischargers into the POTW and any substantial change in the volume or character of pollutants being introduced by sources introducing pollutants into the POTW at the time of permit issuance.

Notwithstanding any pollutants that may be authorized pursuant to subparts 1 and 2 above, an NPDES permit does not authorize the discharge of any pollutants associated with wastestreams, operations, or processes which existed at the time of the permit application and which were not clearly identified during the application process.

In the July 1994 policy statement, the Agency committed to revise the NPDES permit application regulations for both municipal and industrial discharges, so as to ensure that applicants would have the responsibility to characterize more fully the nature of their effluents and the contributions of their effluents to receiving waters. The Agency stated that, in addressing this issue, it would review EPA's position on the scope of the shield provided by sec. 402(k).

Generally, the discharger is in the best position to know the nature of its discharge and potential sources of pollutants. Consequently, requiring as full a disclosure as technically possible in the permit application is one option EPA may want to consider in light of the protection afforded the discharger by the permit shield. However, in the case of POTWs, providing a permit shield only for pollutant discharges fully and completely characterized in the permit application could represent a significant burden on POTWs if they were required to identify every pollutant discharged. This is so because of the potential pollutant contribution into POTW sewer systems from industrial users and residential dischargers. Narrowing the scope of the shield and consequent expansion of potential liability would likely raise the cost associated with the failure to anticipate, detect, and provide information on these discharges.

The Agency has concerns that, using the current application form, permitting authorities using the existing municipal application forms may not always receive the information about an applicant's discharge needed to develop permits consistent with the requirements of the CWA. In today's

proposed rule, the Agency is updating its POTW discharge application requirements (proposed Form 2A and proposed § 122.21(j)) to provide more information to permit writers and to streamline the permitting process by ensuring that the information needed from most applicants is consolidated onto a single application form. The Agency solicits comment on whether the proposal adequately addresses these concerns. Moreover, EPA is seeking the public's views on how to strike the proper balance between the need for environmental protection, incentives to ensure adequate disclosure, and the discharger's need for certainty that its conduct meets legal requirements.

The Agency also specifically requests comment on adding additional application requirements that would make applicants responsible for providing more information than that specified on the form. For example, the Agency is considering adding a question asking whether the POTW has any other information on pollutants not otherwise requested on the form. The Agency is also considering whether to ask whether the POTW has any information on adverse impacts on water quality, such as information concerning beach closings, citizen complaints, or fish kills. In providing comments on such questions, commenters should state whether they would have a chilling effect on—that is, might tend to inhibit—the activities of POTWs already participating, for example, in ambient monitoring. Comment is also requested on the extent to which such information is already available to permitting authorities.

G. Pollutant Data from POTWs

In preparing options for pollutant data collection for today's proposed rule, the Agency sought to identify relevant pollutant data records for reference. In so doing, the Agency reviewed POTW effluent "priority pollutant scan" data from EPA Region VI and from North Carolina. These data represented data from samples of the effluents of several hundred POTWs with a design flow greater or equal to one (1.0) mgd (i.e., "major" POTWs). Although the information requested by the Region and State differed in some respects, each required major POTWs to report on all "priority pollutants" (i.e., the pollutants listed in 40 CFR Part 122, Appendix D, Tables II and III). The Agency compiled this information in a database, and analyzed it to determine the pollutants most frequently detected in these effluents.

The Agency concluded that, although this survey was not conducted based on

statistical methodologies, it was possible to discern certain general patterns in the incidence of pollutants reported. Our review of Region VI and North Carolina data indicated that over 90% of 300 POTWs sampled reported at least one of the chemicals listed in Appendix D, Table III. Copper and zinc each appeared in two-thirds of all the POTWs surveyed; lead and nickel each appeared in about thirty percent of the effluents sampled; antimony, arsenic, cadmium, and silver each appeared in more than fifteen percent of facilities; and mercury and cyanide each appeared in slightly fewer than fifteen percent. Certain volatile organics (i.e., THMs) each appeared in roughly a quarter or more of the POTWs sampled; and certain base neutral compounds (i.e., phthalate esters) each showed up in ten to twenty percent of POTWs. Finally, only a few of the pesticides listed in Appendix D, Table II were reported in a small number of these scans.

While this information was not determinative in the Agency's decisions about what to include on the forms, it was consistent with other information provided, and supported some of the Agency's assumptions articulated elsewhere in this preamble concerning the appropriate pollutant test data to require from major POTWs. Notably lacking, however, were data on discharges from "minor" POTWs (those with a design flow of less than one (1.0) mgd). The Agency is seeking information concerning the discharges from minor POTWs and intends to collect such information between this proposal and the final rule that will provide a basis for determining the appropriate sampling requirements for those POTWs.

H. Public Consultation in the Development of Today's Proposal

In the course of developing today's proposed rule, EPA made efforts to consult with interested stakeholders in the application process. In late 1993 and early 1994, the Agency sought feedback on draft forms and other elements of the proposal from States with approved NPDES programs, local governments, the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA), the Association of Metropolitan Sewerage Agencies (AMSA), the California Association of Sanitation Agencies (CASA), the Water Environment Federation (WEF), and several environmental groups. In response to this outreach effort, the Agency received written comments from a dozen States, several municipalities, and from AMSA. Agency representatives also met with State and

municipal representatives and conducted a conference call through WEF.

With respect to the POTW wastewater discharge application, the Agency was particularly interested in issues relating to pollutant data collection. The Agency indicated that it was considering a tiered approach, based upon POTW size and the level of industrial contribution (i.e., whether the POTW was required to implement a local pretreatment program). Most commenters generally supported the idea of a tiered approach (i.e., that the Agency not require the same information from all POTWs). The Agency received an array of suggestions concerning what pollutant data should be required. Among the concerns raised by commenters were the following: ease of completion; flexible implementation by States; reduced pollutant data requirements; sensitivity to impacts on small municipalities; and elimination of redundant reporting. In addition, the Agency received numerous technical comments concerning various details of the information to be reported.

In response, the Agency has made changes to the proposed rule to provide a user-friendly modular design for the forms and has revised its initial approach to municipal pollutant data collection for this proposal. The Agency's proposed approach to pollutant data collection would limit pollutant data requests to those pollutants of greatest concern and would require less pollutant data from smaller municipalities. However, the Agency is still considering several options concerning the amount of pollutant data to be provided, including options that would require minor POTWs to provide sampling data on metals, some organic compounds, and whole effluent toxicity.

With respect to the sludge application, the Agency was interested in the type and amount of pollutant data currently requested by States. Responses showed variation among States. Comments were also received that questioned the need for some of the information to be collected by Form 2S. The Agency has removed some questions that it agrees are not necessary for sludge permit applications. The Agency also requests comment on several options for pollutant data collection.

Finally, the Agency proposes to allow the use of existing data and to reduce redundant reporting by allowing permitting authorities to waive reporting of information to which they have direct access. This proposal is discussed in more detail in those portions of the preamble which focus on

the relevant provisions of the proposed rule. The Agency also solicits comments on alternative considerations specifically addressed to pollutant data submission and industrial user information.

II. Approach Taken in Today's Notice

A. Scope of Today's Rulemaking

Today's notice proposes two sets of NPDES application requirements and a corresponding permit application form, together with instructions, for each. Proposed § 122.21(j) contains application requirements pertaining to wastewater treatment and discharge at publicly owned treatment works (POTWs), and would require that applicants submitting this information to EPA use new Form 2A. Proposed § 122.21(q) contains application requirements pertaining to generation, treatment, and disposal of sewage sludge at POTWs and other treatment works treating domestic sewage, and would require that applicants submitting applications to EPA use new Form 2S.

The proposed forms would be used both by EPA and by approved NPDES States that choose to adopt these forms. Approved States could also elect to use forms of their own design so long as the information requested includes at least the information required by the final NPDES/sludge regulations. EPA and State NPDES authorities may request additional information from permit applicants whenever necessary to establish appropriate permit limits and conditions. CWA sec. 308.

The proposed forms and instructions for each form are included with today's proposed rule as an appendix to the rulemaking package. EPA is not intending to publish the forms and instructions with the final rule, so as to reduce the length of the Federal Register notice for the final rulemaking, and solicits comment on this issue.

B. The Agency Proposes to Revise the Definition of POTW and Existing Permit Application Requirements for POTWs

Today, EPA proposes to revise the definition of the term "POTW," as defined in 40 CFR Part 122 to conform more exactly with the definition of the term at 40 CFR Part 403. "POTW" is defined at 40 CFR 403.3 as "a treatment works . . . which is owned by a State or municipality." This definition includes devices and systems used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature, as well as sewers, pipes, and other conveyances that carry wastewater to a

POTW treatment plant. As defined, the term "POTW" also refers to the municipality that has jurisdiction over the discharges to and from such a treatment plant. In today's proposed rule, the Agency proposes to revise the definition of POTW in Part 122 so as to be consistent with the more commonly understood definition located in Part 403.

The Agency's intention is to simplify and clarify, though EPA recognizes that any change may create unanticipated confusion. The Agency solicits comments on effects on conforming the Part 122 definition with the Part 403 definition. Specifically, the Agency is interested in the extent the change would affect: implementation of the Combined Sewer Overflow policy; regulatory consideration of sanitary sewer overflows; and implementation and applicability of the NPDES and pretreatment programs to sewerage collection systems that are not owned/operated by the owner/operator of the treatment plant to which collected waste waters are transported.

The Agency proposes to revise whole effluent toxicity testing requirements found in the existing POTW permit application regulations at § 122.21(j). Under existing § 122.21(j) (1)–(3), a POTW must provide the results of whole effluent biological toxicity testing as part of its NPDES permit application, if the POTW has a design flow equal to or greater than one million gallons per day; if it has (or is required to have) an approved pretreatment program; or if it is required to report by the Director (NPDES State Program Director or EPA Regional Administrator). The Agency proposes to revise this requirement to reflect Agency guidance and policy, as well as practical experience in implementing existing requirements, as set forth at proposed § 122.21(j)(4).

The Agency proposes to change the pretreatment requirement for local limit calculations from an application requirement to a permit requirement. Under existing § 122.21(j)(4), any POTW with an approved pretreatment program must provide a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1). The existing provision requires that the local limits evaluation be done prior to permit issuance. This has generated feedback from States and municipalities that it would be better to require the evaluation after permit issuance, so as to avoid the need for a second technical evaluation if the POTW's permit limits are revised in the new permit. In response to these concerns, the Agency proposes to change this from an application requirement to a POTW

pretreatment program requirement, at proposed § 403.8(f)(4)(B).

C. EPA Proposes Form 2A for POTWs to Replace Standard Form A and Short Form A

Today EPA proposes a new NPDES application form, Form 2A, for POTWs. Currently, POTWs may be required to submit one of two forms, depending on the size of the POTW. While both of these forms are approved Federal forms, the NPDES regulations do not require use of the forms by POTWs when applying for a permit. Standard Form A is intended to be used by all POTWs with a design flow equal to or exceeding one million gallons per day. Standard Form A contains questions about the facility and collection system, discharges to and from the facility (including information on some specific pollutant parameters), and scheduled improvements and schedules of implementation. Short Form A is intended for use by all POTWs with a design flow of less than one million gallons per day. Short Form A contains only fifteen questions of a summary nature, and asks for virtually no information on specific pollutants. Many States use one or both of the Federal forms, but a number of States have developed State forms that request information not included on the Federal forms.

EPA proposes to replace both Standard Form A and Short Form A with a single Form 2A, subdivided into two parts, titled "Basic Application Information" and "Supplemental Application Information". Basic application information would include information about the collection system and the treatment plant, general information concerning the types of discharges from the treatment plant, identification of outfalls, certain effluent characteristics, and scheduled improvements. The Agency believes that a separate short form for all minor POTWs is no longer appropriate, because in order to establish adequate permit limits, information such as that mentioned above must be collected from all POTWs, regardless of size.

On the other hand, the Agency recognizes the need to be selective in requiring further additional information. For this reason, the Agency has divided the proposed form into two parts. To limit the reporting burden for smaller POTWs without significant industrial contributions, EPA proposes to require effluent monitoring data for 17 parameters from POTWs with design flows less than one million gallons per day (mgd) and without pretreatment programs. These 17 parameters consist

mostly of conventional and nonconventional pollutants. Larger POTWs and pretreatment POTWs, by comparison, would be required to report effluent monitoring data for metals and organic compounds as well as the 17 parameters required for smaller POTWs. Thus, the Basic Application Information part of Form 2A would require reporting on those parameters required of all POTWs, while the Supplemental Application Information part of the form would be used by applicants providing data on toxic pollutants (i.e., larger POTWs and pretreatment POTWs). Similarly, the Supplemental Application Information part of Form 2A is intended to be used by applicants required to provide the results of whole effluent toxicity tests, applicants with significant industrial users, and applicants with CSOs.

The Agency also invites comment on requiring use of the form itself. As explained previously, EPA conducted significant public outreach to design an application form that is easy to use, including outreach on the form itself. Use of the form would provide all of the information requested in the proposed application regulations, whereas modification of the form may result in failure to provide information to be required in the proposed regulations. On the other hand, EPA seeks to provide maximum flexibility by "streamlining" procedures for permit development. The Agency seeks comment on whether requiring use of the form would interfere with streamlining permitting procedures.

D. Applicability of Form 2A to Privately Owned and Federally Owned Treatment Works

As in the case of existing Standard Form A and Short Form A, EPA proposes that Form 2A and the application requirements at § 122.21(j) be required only for POTWs. However, the Agency proposes that the Director have the discretion to use the proposed form for treatment works that are not POTWs. As previously discussed, the NPDES program has evolved considerably since Standard Form A and Short Form A were promulgated in 1973, and now embraces facilities that operate similarly to POTWs but which do not meet the regulatory definition of POTW. Although not owned by a State or municipality, such facilities nevertheless receive predominantly domestic wastewater, provide physical and/or biological treatment, and discharge effluent to waters of the United States. Such facilities include Federally owned treatment works (FOTWs) and privately owned treatment

works that treat primarily domestic wastewater.

EPA is aware that Federal and State permitting authorities use a number of mechanisms for obtaining NPDES permit application information from non-POTW treatment works. These mechanisms include Standard Form A, Short Form A, Form 2C ("Existing Manufacturing, Commercial, Mining, and Silvicultural Operations"), and Form 2E ("Facilities Which Do Not Discharge Process Wastewater"). The Agency believes that Form 2A would in many cases be the more appropriate application form for non-POTW treatment works, and solicits comments on its applicability to such facilities.

Nevertheless, the Agency does not propose to require Form 2A for non-POTW treatment works. Despite many functional similarities to POTWs, such facilities do not share the same regulatory requirements and thus might not be required to report the same information to permitting authorities. In many instances, non-POTW treatment works are not required under the NPDES regulations to develop pretreatment programs, meet secondary treatment requirements, or report results of whole effluent toxicity testing with their permit applications. For those facilities, requiring such information through Form 2A might be unnecessary.

The Agency solicits comments on whether the provisions of § 122.21(j) and the requirement to use Form 2A should be extended to treatment works other than POTWs. EPA is particularly interested in commenters' views on how to collect appropriate information in appropriate circumstances. EPA also seeks to design permit application requirements to account for privatization of treatment plants initially constructed as publicly owned treatment works. The permit application requirements in this proposed rule may be appropriate for partially privatized portions of POTWs, particularly because the proposed information regulations in today's rule would solicit information about sewerage collection systems that might not otherwise be collected under the industrial permit application regulations. Finally, EPA solicits comment on the extent of the similarity between POTWs and FOTWs, for example, whether FOTWs would have combined sewage collection systems. In another part of today's proposal, EPA is soliciting comment about the definition of POTW to which the permit application regulations would apply.

E. EPA Proposes Revised Application Requirements and Form 2S for Sewage Sludge Permits

Today, EPA also proposes a new form, Form 2S, to collect information on sewage sludge from treatment works treating domestic sewage (TWTDS). The term "treatment works treating domestic sewage" is a broad one, intended to reach facilities that generate sewage sludge or effectively change its pollutant characteristics as well as facilities that control its disposal. The term includes all POTWs and other facilities that treat domestic wastewater. It also includes facilities that do not treat domestic wastewater but that treat or dispose of sewage sludge, such as sewage sludge incinerators, composting facilities, commercial sewage sludge handlers that process sludge for distribution, and sites used for sewage sludge disposal. In addition, EPA may designate a facility a TWTDS when the facility's sludge quality or sludge handling, use, or disposal practices have the potential to adversely effect public health and the environment. Septic tanks or similar devices are not considered TWTDS.

In addition to proposing sewage sludge application requirements in new paragraph 122.21(q), EPA also proposes to delete the cross-reference to § 501.15(a)(2) in paragraph 122.21(d)(3)(ii). This would consolidate all of the sewage sludge application requirements in paragraph 122.21(q). The information included in § 122.21(d)(3)(ii) and § 501.15(a)(2) was not intended to be a final, comprehensive list of all of the application information required of a TWTDS. Such a comprehensive list was not possible until after promulgation of the technical sewage sludge standards. Rather, with these sections, EPA provided a minimum set of information requirements to suffice until more comprehensive sewage sludge permit application regulations could be promulgated. In light of the promulgation of technical sewage sludge use or disposal standards, at 40 CFR Part 503, EPA today proposes to modify the sewage sludge permit application requirements to add new § 122.21(q) and to revise paragraph § 122.21(d)(3)(ii) accordingly.

EPA intends to maintain consistency between the NPDES permit application requirements of Part 122 and the State sewage sludge permitting requirements of Parts 123 and 501. This reflects EPA's belief that a TWTDS should submit the same application information regardless of whether the permitting authority regulates sludge management under an approved NPDES or under a non-NPDES

program. Therefore, under today's rulemaking, EPA also proposes to revise the language of §§ 123.25(a)(4) and 501.15(a)(2) to modify the sludge information requirements. EPA seeks comment on this revision.

F. Reasons for Separate Form 2A and Form 2S

EPA today proposes two separate forms for municipal wastewater discharges and sludge for several reasons. First, the forms would differ in their applicability. Form 2A would apply only to POTWs; Form 2S would require information from all TWTDS. Most facilities that generate, treat, or dispose of sewage sludge are POTWs, and will be required to submit both application forms. However, several thousand TWTDS do not discharge to surface waters and therefore are not required to have NPDES discharge permits. Thus, they would be required to submit Form 2S but not Form 2A.

Second, separate application forms are also appropriate because wastewater and sewage sludge are often regulated by different permitting authorities. In 41 States and territories, the NPDES program is administered at the State level through an EPA-approved NPDES program. Therefore, POTWs in NPDES States would obtain NPDES permits from the State permitting authority (by submitting Form 2A to the State) and sewage sludge permits from EPA (by submitting Form 2S to the EPA Regional Office). Separate application forms would facilitate this bifurcated permitting process. In addition, even when a State sludge permitting program is approved, the program will not necessarily be administered by the State's NPDES permitting authority. For example, a POTW in a State with both NPDES and sludge permitting authority could receive its NPDES permit from the water management agency and its sewage sludge permit from a solid waste agency. Separate Forms 2A and 2S would also facilitate permitting in this situation.

G. EPA Solicits Comment on the Use of Electronic Application Forms

Consistent with recent amendments to the Paperwork Reduction Act, the Agency intends to develop electronic data submission as an alternative form of application. The use of electronic media should help to streamline the application process and to reduce the amount of repetition associated with completing application forms that are only available on hard copy. As previously noted, the elimination of redundant reporting is one of the goals of this rulemaking.

It is not clear, however, how this would best be accomplished, especially because permit application forms must be "signed" to ensure reliability of permit application information (and enforceability of the permit application regulations). Options range from transmitting data electronically, submitting disk copies, or submitting a hard copy. It might be most feasible to have electronic forms that could be distributed and completed electronically, and then printed, signed, and submitted. Although the Agency is considering how "signatures" for electronic submissions could be obtained, there are other issues concerning the use of application forms, such as how to attach accompanying documents. The Agency solicits comments regarding the interest that applicants and permitting authorities may have in this area, and suggestions as to how it could most feasibly be accomplished.

III. Description of Proposed Requirements

A. EPA Proposes to Revise Requirements in § 122.21 (c), (d) and (f) Concerning the Use of Forms 1, 2A, and 2S

EPA proposes revisions to the existing general application requirements for all NPDES permittees, which would require the use of Forms 2A and 2S by applicants for EPA-issued permits. The proposed rule would not require applicants using these forms to use Form 1, as is currently required. Today's proposed rule substantially incorporates the requirements of § 122.21(f) into the requirements of proposed § 122.21 paragraphs (j) and (q).

1. Requirement to Submit Form 2A

EPA proposes in § 122.21(d) to require POTWs to submit the information at § 122.21(j) using Form 2A or an equivalent form approved by the Director. The Agency proposes to require applicants for EPA-issued permits to complete Form 2A, but is considering not requiring the use of the form so long as the proposed regulatory requirements are met. The Agency intends to allow the use of any method of electronic data submission the Agency may approve as part of the final rule in lieu of the form itself.

2. Requirement to Submit Form 2S

EPA also proposes in § 122.21 paragraphs (c)(2)(iii) and (d) to require TWTDS to submit the information at § 122.21(q) using Form 2S or an equivalent form approved by the Director. As with Form 2A, the Agency proposes to require applicants for EPA-

issued permits to complete Form 2S, but is considering not requiring the use of the form so long as the proposed regulatory requirements are met. Also as with Form 2A, the Agency intends to allow the use of any method of electronic data submission the Agency may approve as part of the final rule.

B. Application Requirements for POTWs (40 CFR 122.21(j))

Today's proposed rule includes application requirements for all POTWs. These requirements are proposed at 40 CFR 122.21(j). Form 2A tracks the information required by the regulation in parallel fashion. Applicants for State-issued permits are not required to use Form 2A, so long as the other application form provided by the Director requests the information required by proposed § 122.21(j).

EPA acknowledges concerns relating to redundant reporting which were raised by State and municipal commenters during the consultation process. The Agency does not wish to require applicants to report information already provided or available to the permitting authority. Today's proposal would allow permitting authorities to waive reporting requirements, as appropriate. The introductory paragraph of proposed § 122.21(j) would allow the Director to waive any requirement in proposed paragraph (j) if the Director has access to substantially identical information. The Agency solicits comment on this approach and, specifically, on the conditions for allowing such a waiver. In today's proposed rule, the Agency also solicits comments on more narrowly defined waivers for specific requirements (see discussion below concerning pollutant data requirements and industrial user information requirements).

The Agency also solicits comment on ways to allow the permit writer or permitting authority discretion in waiving particular information where the permitting authority determines that such information is not necessary for the application. In other words, there may be flexible ways to look at each applicant in light of the overall "matrix of characteristics" regarding a particular facility. Where, for example, historical data indicate that additional sampling is not warranted unless other conditions have changed, the Agency is allowing the permitting authority to waive such sampling. Such flexibility would involve a holistic approach to implementing these proposed requirements. The Agency solicits comment as to ways in which it could be accomplished without making these provisions entirely discretionary, and

thus making it difficult for the applicant to predict how discretion would be exercised. This might be particularly relevant on the second and subsequent rounds of permitting under these proposed provisions. The Agency also seeks comment on what information might be appropriate and what information might be inappropriate for such waivers.

1. Basic Application Information

Today's proposal would require all POTW applicants to provide the information in proposed § 122.21(j)(1). All of this information is also requested in Questions 1–16 of the Basic Application Information part of proposed Form 2A.

Proposed § 122.21(j)(1) of today's rule would require information on the POTW's service area and physical plant. The proposed rule would require all applicants to provide information regarding the community served and physical characteristics of the treatment works.

Proposed § 122.21(j)(1)(i) requests facility identification information. Proposed § 122.21(j)(1)(ii) requests information about the applicant, which may or may not be the facility itself. Proposed § 122.21(j)(1)(iii) asks the applicant to provide permit numbers of any existing environmental permits that have been issued to the facility.

Proposed § 122.21(j)(1)(iv) would require the applicant to list the municipalities and populations served by the POTW. The POTW may serve several areas (including unincorporated connector districts) in addition to the one in which it is located. The permit writer needs to know what areas are served and the actual population served in order to calculate the potential domestic sewage loading to the facility. The information on the community is also useful for providing notice and public comment for permit reissuance, and for public education.

Proposed § 122.21(j)(1)(v) would require the applicant to report the facility's design flow rate and the annual average daily flow rate for each of the past three years. This information enables the permitting authority to calculate limits appropriate to the POTW, to alert the permitting authority to the need for flow restrictions or facility expansion, and to compare design and actual flows.

Proposed § 122.21(j)(1)(vi) would require information on the type of collection system used by the facility. The applicant would also identify whether the collection system is a separate sanitary system or a combined storm and sanitary system. The

applicant would also estimate the percent of sewer line that each type comprises. Familiarity with the type of collection system enables the permit writer to anticipate combined collection system overloading in wet weather. The current application form, Standard Form A, requests that the applicant also provide the length of the collection system (in miles). The proposed rule does not include this requirement because the Agency does not believe that such information is useful to the permit writer.

Proposed § 122.21(j)(1)(vii) would also require information on inflow and infiltration. Inflow is the uncontrolled entrance of water into the collection system from surface sources such as unsealed manholes. Infiltration is water that enters the collection system through deteriorated or defective pipes, joints, and connections. Both conditions may indicate the need for special permit conditions (such as best management practices) to reduce the inadvertent flow of water to the POTW. EPA requests comment on the availability of inflow and infiltration information at POTWs. This provision would also request information on steps the facility is taking to minimize inflow and infiltration.

Proposed § 122.21(j)(1)(viii) would require the applicant to provide a topographic map that includes information on the layout of the treatment plant, including all unit processes; intake and discharge structures; wells, springs, and other surface water bodies; sewage sludge management facilities; and the location(s) at which hazardous waste enters the treatment plant by truck, rail, or dedicated pipe. This provision reflects the topographic map requirements of § 122.21(f)(7), and is more specifically designed to include features most likely to be found at a POTW.

Proposed § 122.21(j)(1)(ix) would require the applicant to submit a process flow diagram or schematic, together with a narrative description. The permit writer uses this information to develop secondary treatment and water quality-based permit requirements, as well as other applicable permit conditions.

Proposed § 122.21(j)(1)(x) would require information about bypasses, which are intentional diversions of wastestreams from any part of a treatment plant. Regulations governing bypasses are set forth at 40 CFR 122.41(m). Facilities experiencing bypasses are required to estimate the frequency, duration, and volume of bypass incidents, and the reasons why

bypasses have occurred. Information on bypasses is used by the permit writer to develop appropriate permit limits and conditions for these discharges.

Proposed § 122.21(j)(1)(xi) would require general information regarding discharges to waters of the United States as well as discharges to destinations other than surface waters. This information enables the permit writer to account for all wastewater that enters the POTW, regardless of whether or not it is discharged directly to receiving waters. From a watershed permitting standpoint, permitting authorities may use this information to identify flows that individually or collectively may have an impact on the watershed, whether or not they are discharged directly into waters of the U.S.

If any effluent is discharged to surface impoundments with no discharges to waters of the U.S., the applicant would report the location of each surface impoundment, the annual average daily volume discharged to each surface impoundment, and whether the discharge is continuous or intermittent. If effluent is applied to the land, the applicant must provide the site location, the site size, and the annual average daily volume of effluent applied. The applicant must also state whether land application is continuous or intermittent. This information alerts the permit writer to the potential for point source discharges to arise from land application sites under certain circumstances, such as cold weather or high volume discharges, or from surface impoundments.

Proposed § 122.21(j)(1)(xi) would also require the applicant to report whether wastewater is discharged to another treatment works, the means by which the wastewater is transported, the average daily flow rate to that facility, and information identifying the receiving facility. The applicant must also identify the organization transporting the discharge, if other than the applicant. The permit writer needs this information in order to track the wastewater and verify the transfer.

Finally, proposed § 122.21(j)(1)(xi) would require information on other types of disposal, such as underground percolation or injection. These types of disposal may result in the transfer of pollutants to waters of the U.S. through underground flows, and thus are of interest both to the permit writer in writing the permit and to the permitting authority in designing watershed protection strategies.

Proposed § 122.21(j)(1)(xii) would require the applicant to report whether the POTW is located on a Federal Indian Reservation, discharges to a receiving

water that is on a Federal Indian Reservation or upstream of and eventually flows through a Federal Indian Reservation. This information enables the permit writer to identify the proper permitting authority and applicable requirements, including applicable water quality standards.

Proposed § 122.21(j)(1)(xiii) would require the applicant to provide information about any scheduled facility improvements. Improvements to the facility may change its flow or removal efficiency, necessitating a permit modification. The permit writer may modify the permit when the improvement is complete, or may include alternate limits in the permit that would take effect upon completion of the improvement.

The current application form, Standard Form A, requests certain information about required improvements including information on dates for completion of the preliminary plan, completion of the final plan, awarding of contract, and site acquisition. EPA is proposing to delete these requirements but solicits comment on their usefulness. Standard Form A also requires the applicant to identify the authority imposing the improvement and the general and specific action codes. The Agency proposes to delete this requirement because permit writers have indicated that this information is unnecessary to writing the permit.

2. Information on Effluent Discharges

Proposed § 122.21(j)(2) of today's rule would require all POTWs that discharge effluent to waters of the U.S. to provide specific information for each outfall through which effluent is discharged to surface waters, excluding CSO outfalls. This information would be reported in Questions 17, 18, and 19 of the Basic Application Information part of proposed Form 2A. The applicant would be required to submit the information required for each outfall.

Proposed § 122.21(j)(2)(i) would require general information about each outfall. The applicant must specify the outfall number, location, latitude and longitude, distance from shore (if applicable), distance below surface (if applicable), and average daily flow (in million gallons per day). EPA enters the latitude and longitude points into the water quality data base STORET. Maps of the location of water discharges are developed to examine the relationship between NPDES outfalls and other areas of concern, such as drinking water intake points or sensitive ecosystems. This information is also used to establish water quality-based effluent limits appropriate for the particular

receiving water. The locational data requested by this question also supports the Watershed Protection Approach, because it provides Federal and State environmental managers with information they need to geographically locate discharge points.

Latitude and longitude would be required to be reported to the nearest second. This is consistent with EPA's Locational Data Policy (LDP) (See "Locational Data Policy Implementation Guidance, Guide to the Policy (March 1992)"). In accordance with this policy, all latitude/longitude measurements in Agency data collection should have accuracies of better than 25 meters (i.e., roughly, one second).

Proposed § 122.21(j)(2)(i) would require information about the interval and duration of effluent discharges that are seasonal or periodic. Such discharges arise from certain conditions, usually related to the process at an industrial user, whereby the industrial user discharges intentionally at specified times following treatment. For each outfall with an intermittent discharge, the applicant must report the annual frequency, duration, flow, and the months in which the discharge occurs. The permit writer uses this information to develop permit limits that reflect the intermittent nature of such discharges.

Proposed § 122.21(j)(2)(i) would also require the applicant to specify whether the outfall is equipped with a diffuser and the type of diffuser (e.g., high-rate) used. The permit writer uses this information to make mixing zone calculations. (See "Technical Support Document for Water Quality-based Toxics Control," EPA/505/2-90-001, March 1991.)

Most POTWs discharge treated effluent to surface waters such as streams or rivers. Proposed § 122.21(j)(2)(ii) solicits information that describes and identifies the receiving waters into which each outfall discharges. Information about the type of receiving water is useful to the permit writer because mixing zones and wasteload allocations may be calculated differently for different types of receiving waters.

This provision would also require the name of the watershed, the Soil Conservation Service watershed code, the name of the State management basin, and the United States Geological Survey hydrologic code. This locational information supports the Watershed Protection Approach, by providing Federal and State environmental managers with a means of locating dischargers within the U.S. Soil Conservation Service watershed

categorization system, a State's river basin categorization system, and the U.S. Geological Survey cataloging scheme. Some States, as well as EPA Regions, are implementing a basin management approach to watershed protection and will require the information requested by this question.

Proposed § 122.21(j)(2)(iii) would require information on the level of treatment for discharges from each outfall. The CWA requires POTWs, with some exceptions, to treat influent to the level of secondary treatment prior to discharge. Secondary treatment is defined at 40 CFR 133.102 in terms of five-day biochemical oxygen demand (BOD₅), total suspended solids (SS or TSS), and pH. Part 133 allows adjustments to the secondary treatment requirements for POTWs that meet certain criteria. In addition, some POTWs are subject to requirements for "treatment equivalent to secondary treatment," as described in § 133.105. Finally, some POTWs may have more advanced levels of treatment necessary, for example, to meet water-quality based standards for certain pollutants, such as nitrogen and phosphorous.

This provision would require data on design removal efficiencies for BOD₅ and SS. Information on these parameters is necessary in order for the permit writer to set pollutant limits that accurately reflect the pollutant removal that the POTW can achieve. It may also alert the permitting authority to the need for improvements to the treatment facility.

Proposed § 122.21(j)(2)(iii) would also require information on disinfection, which usually follows secondary or advanced treatment and which destroys bacteria, viruses, and other pathogens in the wastewater. Disinfection most commonly occurs through chlorination. Many POTWs also dechlorinate their effluent prior to discharge because excessive free chlorine in a wastewater discharge can cause aquatic toxicity in the receiving water.

3. Effluent Monitoring for Specific Parameters

The purpose of proposed § 122.21(j) and proposed Form 2A is to provide the permit writer with the minimum information necessary to issue to a POTW an NPDES permit that contains effluent limitations consistent with the goals of the CWA. EPA recognizes that the quality of a POTW's effluent depends on several factors, such as the number and type of industrial users of the POTW, and that not all POTWs need to report the same information to ensure developing NPDES permits to achieve designated uses of the Nation's waters.

Hence, EPA proposes a tiered approach to collect needed effluent monitoring information.

The Agency proposes to require all POTWs to report effluent monitoring information for the 17 parameters listed at proposed 40 CFR Part 122, Appendix J, Table 1 ("Effluent Parameters For All POTWs") (see also proposed Form 2A, Basic Application Information, question 19). These parameters have a high likelihood of being present in most POTW effluents.

EPA is proposing to require additional reporting of pollutant-specific data for POTWs with a design flow greater than or equal to 1.0 mgd; POTWs that have or are required to have a pretreatment program; and other POTWs required to provide this information to the permitting authority. In general, the pollutants for which additional data would be required are those for which there are State water quality standards, other than dioxin, asbestos, and "priority pollutant" pesticides. Thus, the Agency would require, at a minimum, data on those pollutants listed at proposed 40 CFR Part 122, Appendix J, Table 2 ("Effluent Parameters For Selected POTWs and Treatment Works Treating Domestic Sewage") (see also proposed Form 2A, Part A, Supplemental Application Information: Expanded Effluent Testing). The Agency would not require data, unless otherwise specified by the permitting authority, on those pollutants listed at proposed 40 CFR Part 122, Appendix J, Table 3 ("Other Parameters for Treatment Works Treating Domestic Sewage And Selected POTWs").

Proposed § 122.21(j)(3) would require that data be separately provided for each outfall through which treated sanitary effluent is discharged to waters of the United States. Further, EPA recognizes that a POTW's effluent may have similar qualities at more than one of its outfalls. EPA thus proposes to allow applicants to provide the effluent data from only one outfall as representative of all such outfalls, where two or more outfalls with substantially identical effluents, and with the approval of the permitting authority on a case-by-case basis. For outfalls to be considered substantially identical, they should, at a minimum, be located at the same plant, be subject to the same level of treatment, and have passed through the same types of treatment processes. The Agency solicits comment on this approach and, particularly, on whether data should be separately collected from all such outfalls. Alternatively, should applicants generally be encouraged to follow this approach rather than

selectively approved on a case-by-case basis?

EPA proposes that effluent and monitoring data submitted to the permitting authority meet the following conditions:

1. *Maximum Period of Sample Collection:* All data summarized in response to these questions is proposed to be collected within a 3-year period preceding the permit application date.

2. *Minimum Number of Daily Sample Analyses:* Results from a minimum of three separate daily sample analyses (pollutant scans) are proposed to accommodate data needs for each analyte on which information is requested. Additional samples might be required on a case-by-case basis.

3. *Seasonal Considerations:* For most POTWs, EPA expects that the three, or more, sets of results for daily sample analyses summarized in response to these information needs would represent typical daily discharges occurring during at least three different calendar seasons. For most applicants, EPA proposes to require that a minimum of 4 months and a maximum of 8 months separate at least one pair of the daily sample analysis results included in the summary. Applicants unable to meet this time requirement due to, for example, periodic, discontinuous, or seasonal discharges could obtain alternative guidance on this requirement from their permitting authority. Permitting authorities might alter this requirement to address considerations of specific POTWs.

4. *Testing Methods:* Sampling and analysis is proposed to be conducted in accordance with methods approved under 40 CFR Part 136. Applicants would be expected to use methods that enable pollutants to be detected at levels adequate to meet water quality-based standards. Where no approved method can detect a pollutant at the water quality-based standards level, applicants would be expected to use the most sensitive approved method. If the applicant believed that an alternative method should be used (e.g., due to matrix interference), the applicant would need to obtain prior approval from the permitting authority. If an alternative method approved in accordance with 40 CFR Part 136 is specified in the existing permit, the applicant would be expected to use that method unless otherwise directed by the permitting authority. When no approved analytical method exists, an applicant could use a suitable method and provide a description of the method. "Suitable method" means a method that is sufficiently sensitive to measure as close to the water quality-based

standard as possible. The permit writer needs to know which testing methods are used in order to assess the technical validity of the results.

5. *Daily Samples:* For most POTWs, sampling is proposed to be conducted using composite samples mixed on a flow-proportional basis over a 24-hour period from at least eight sample aliquots (100 ml minimum) collected using an automated sample collection device. The flow-proportional basis would involve either varying the intervals between the collection of equal volume samples or varying the sample volumes collected over equal interval collection periods. The reason for using automated samplers is that they are designed to make the necessary adjustments according to the rate of flow.

For POTWs where automated sample collection devices are not available, it is proposed that appropriate daily composite samples for analysis would be produced by mixing at least four sample aliquots (100 ml minimum), each collected to represent typical segments of the operating day effluent flows.

Because pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and bacterial indicators cannot be properly sampled by continuous sampling devices, summarized results for each daily analysis are proposed to be based on individual analysis of a minimum of four grab samples collected to represent typical effluent flows over the operating day. A grab sample has 100 ml minimum volume, collected over 15 minutes or less.

For effluents from treatment ponds or other impoundments that have retention times of greater than 24 hours, single grab samples (100 ml minimum collected over 15 minutes or less) would be considered adequate to represent daily conditions for all analytes reported.

6. *Maximum Data Summarization Requirements:* EPA recognizes that not all analytes are sampled and analyzed at the same frequency for effluents from a single POTW or across all POTWs. EPA thus proposes that summarized results for analytes should include all data collected over the preceding three-year period, ending the calendar quarter preceding the permit application date (providing, for example, a total of 3 annual samples or 12 quarterly samples summarized per analyte, as well as any other samples taken by the applicant).

For those analytes sampled and analyzed at monthly or more frequent intervals, EPA proposes that applicants only summarize and report data collected over a single one-year period

(e.g., providing a summary of 12 monthly samples, together with any other samples taken during that period, per analyte). The one-year period included in this data summarization interval would end the calendar quarter preceding the permit application date.

Applicants would be required to indicate for each analyte the number of samples summarized and whether each summary represents a one or three year summarization period.

7. *All Data Must Be Reported:* For each analyte, EPA proposes that all samples conducted and analyzed in accordance with 40 CFR Part 136 during the reporting period be reported (i.e., included with all other data for the period reported), regardless of whether or not they were required by the permitting authority or these proposed regulations.

8. *Data Must Be Summarized:* For each analyte, EPA proposes that applicants report the maximum daily discharge, expressed either as concentration or mass, of all of the samples reported. Applicants would also report the average daily discharge, expressed either as concentration or mass, of all the samples reported.

The Agency is considering requiring applicants to report only concentration numbers on the application or, alternatively, requiring that applicants who wish to report mass also provide flow information used in calculating the mass figures reported. Thus, applicants would be required to report the flow rate used in calculating the maximum daily discharge and the average of all of the flow rates used in calculating the average daily discharge.

Some States may wish to have individual pollutant data reports, rather than summary data, from applicants, either from all applicants or on a case-by-case basis, in addition to or instead of the summary data required by proposed § 122.21(j)(3). States would be encouraged to obtain this information in the manner considered most suitable to their needs.

9. *Existing Data May Be Reported:* Where the applicant has existing data for a given pollutant, and where such data meet the conditions described above, EPA proposes to allow the use of such data in lieu of data collected solely for the purpose of the permit application. If, for example, the applicant were to have pollutant data from two samples, only one more sample would be needed to meet the minimum requirement of three samples, assuming that other conditions were met. Also, where such data have previously been reported to the permitting authority, the permitting

authority could waive such requirements as having been satisfied.

The Agency proposes the above conditions in an effort to be clear about the nature of what needs to be reported. Accordingly, the Agency solicits comment on whether these conditions are sufficiently clear, on the one hand, or whether they are overly restrictive, on the other.

The Agency also solicits comment on each of the particular conditions described above. The Agency is particularly interested in comment on two of these conditions: whether three pollutant scans is the appropriate number to require; and whether the three-year requirement for reporting test data should be waived, as proposed, where sampling for pollutants is done on a monthly basis.

The analytical data proposed to be reported would result from a variety of analytical methods, with detection limits ranging from less than 1 ppb to more than 10 ppb. The toxic analytes that are of most concern at low concentrations are primarily analyzed by gas chromatography (GC), gas chromatography/mass spectrometry (GC/MS), inductively coupled plasma emission spectrometry (ICP), and atomic absorption spectrometry (AA), and high resolution capillary column gas chromatography/high resolution mass spectrometry (HRGC/HRMS). These methods have different numeric analytical endpoints, based upon detection (e.g., method detection limit) or quantification (e.g., minimum level) levels. In addition, the wide latitude of data reporting definitions and conventions in use in various regulatory programs complicates the generation and interpretation of analytical data reported with this proposal.

In order for permit writers to develop appropriate permit requirements, they must be able to establish whether a pollutant is present and whether a reasonable potential for environmental impairment exists, as defined by water quality standards and criteria. To properly make such determinations, permit writers require more complete data and documentation than has been previously supplied with the application form, because any ambiguity increases the likelihood that the permit writer will need to include in the permit limits that are near or below 10 ppb or, alternatively, additional monitoring requirements for those pollutants for which the data are ambiguous.

Thus, it is in the best interests of both the applicant and the permitting authority that the proposed rule would require that the method detection limit (MDL), minimum level (ML), or other

designated method endpoint, together with identification of the corresponding analytical methods used be stated in the permit application. Along with this information, the proposal would require applicants to submit pollutant data based upon actual sample values. In other words, even where test values are below the detection or quantification level of the method used, the actual data value should be reported, rather than reporting "non-detect" ("ND") or "zero" ("0") in such instances. If the endpoint of the method used is reported along with the actual sample results, the permitting authority will be able to determine if the data is in the "non-detect" range or "below quantification" range.

The Agency has provided guidance to the applicant in the proposed Form 2A instructions in order to minimize the conditions that lead to inaccurate sampling data. The Agency proposes that the permit applicant: (1) alert its laboratory to the analytical and detection limit requirements and the expectations for documentation; and (2) report the necessary documentation to ensure that the permit writer is fully informed as to the methods used and the results obtained. For more detailed information concerning analytical issues (acceptable methods, effluent-specific detection limits, and documentation of data and analytical problems), applicants should refer to the "Guidance on Evaluation, Resolution, and Documentation of Analytical Problems Associated with Compliance Monitoring", EPA 821-B-93-001, June 1993.

a. Pollutant Data Reporting Requirements for All POTWs

EPA has identified certain pollutants that are commonly found in POTW effluents, regardless of size, and for which permit limits may be necessary to prevent adverse effects on receiving waters. Proposed § 122.21(j)(3) would require each applicant, regardless of size, to provide monitoring information for the pollutants listed in proposed Appendix J, Table 1. These include the conventional pollutants (defined, at 40 CFR 401.16, as biochemical oxygen demand, total suspended solids, pH, fecal coliform, and oil and grease), as well as other parameters that are common to domestic wastestreams, such as ammonia (and other nitrogen compounds), and compounds of other origin, such as chlorine (which is used for disinfection during the treatment process).

The complete list is, as follows:

Flow
Temperature

Bacterial indicators (*E. coli*, Enterococci, Fecal coliform)
5-day biochemical oxygen demand (BOD₅ or CBOD₅)
Chlorine (total residual, TRC)
Kjeldahl nitrogen (total organic as N)
Oil and Grease
Total dissolved solids
Total suspended solids
pH
Phosphorus (PO₄-P)
Dissolved oxygen
Hardness (as CaCO₃)
Ammonia (as N)
Nitrate + Nitrite (as N)

The secondary treatment regulations at 40 CFR Part 133 describe the minimum level of effluent quality that must be attained in terms of BOD₅ (or CBOD₅), TSS, and pH, and specify technology-based criteria for each parameter. Control of BOD₅ (or CBOD₅) is necessary to ensure sufficient dissolved oxygen in the receiving water to protect aquatic life; BOD₅ (or CBOD₅) is also a key parameter in biological treatment systems. Extremely high levels of suspended solids in the POTW's influent can interfere with POTW operations. High TSS levels in the effluent also block light in the receiving water and inhibit photosynthesis. Permit writers use information for these, as well as all other parameters listed above, to set appropriate water quality-based limits for permit applicants. In instances where POTWs have been allowed to substitute chemical oxygen demand (COD) or total organic carbon (TOC) for BOD₅, in accordance with 40 CFR 133.104, applicants would report the substituted parameter.

EPA has determined that enterococci and *E. coli* are better biological indicator organisms than fecal coliform. From 1973 through 1982, the Agency studied marine and freshwater bathing beaches. These studies reveal strong correlations between instances of gastrointestinal illness and concentrations of certain indicator organisms at these beaches. That is, in both fresh and marine waters, enterococci and *E. coli* were strongly correlated with gastroenteritis. (For more information on this study, see "Ambient Water Quality Criteria for Bacteria—1986," EPA440/5-84-002, January 1986.)

Because high numbers of these organisms in receiving water indicate an increased potential for human gastrointestinal illness following swimming or ingestion, and because both enterococci and *E. coli* are contained in all domestic sewage, indicating the potential for gastrointestinal illness, EPA is

proposing to require all POTWs to test for these biological indicator organisms in their discharged effluents. The Agency is also proposing, however, to allow the use of fecal coliform as the biological indicator for those applicants where the applicable permitting authorities have not yet switched to monitoring requirements for enterococci and *E. coli*. EPA solicits comments on allowing the use of fecal coliform in cases where permitting authorities have not switched from using fecal coliform as the pathogen indicator. The Agency also solicits comment as to whether testing for enterococci and *E. coli* should be required at all before the Agency has developed approved test methods for these parameters.

The Agency proposes that all POTWs report chlorine and ammonia levels. EPA's experience with toxicity identification evaluations (TIEs) at many POTWs indicate that chlorine and ammonia frequently cause effluent toxicity. Additional studies also reveal frequent adverse effects by these compounds within receiving waters. Therefore, at POTWs that chlorinate their wastewaters without subsequent dechlorination prior to discharge, chlorine may be present in concentrations sufficient to cause toxicity in receiving waters. Ammonia, which is common in nearly all sanitary sewage, is highly toxic to aquatic life in its un-ionized form. The ratio of the relatively toxic un-ionized ammonia form (NH_3) compared with the considerably less toxic ionized ammonium form (NH_4^+) is dependent on pH and temperature.

Chlorine and ammonia are listed in many State water quality standards, and "The Quality Criteria for Water 1986" (EPA 440/5-86-001, also known as the "Gold Book") lists criteria for both pollutants. Chlorine and ammonia can react to form chloramines, which can be toxic, and are more persistent in the aquatic environment than elemental chlorine. In estuaries or ocean water, bromamines can also form. Analytical methods recommended for the quantification of total residual chlorine (TRC) also indicate the presence of chloramines and bromamines. If a disinfectant other than chlorine is used, the permitting authority has the discretion to require additional data for that disinfectant. If alternative disinfection technologies are used, the applicant must submit a description of the alternate process.

Depending on the type of treatment provided, different sampling regimes may be appropriately required. For example, POTWs that do not use chlorination for disinfection, and do not

otherwise use chlorine in their treatment processes, perhaps should not be required to sample for chlorine. The Agency solicits comment on whether to waive chlorine data from such POTWs.

EPA criteria for nitrate, nitrite, and phosphorus are published in The Gold Book. Because these parameters are prevalent in most POTW effluents and because of their impacts on receiving waters, EPA is proposing to require all applicants to test for them. Nitrogen and phosphorus are often limiting nutrients in marine and fresh water systems, respectively. Excessive loadings of nitrogen (discharged as ammonia (including ammonium), nitrate, nitrite, and organic nitrogen) and phosphorus (discharged as phosphate) can stimulate algae growth, interfering with shoreline aesthetics and recreational uses. In addition, decaying algae can reduce dissolved oxygen concentrations, thus impairing the aquatic environment. At concentrations not typically encountered in surface waters, nitrate is toxic to fish.

Today, EPA proposes monitoring and reporting requirements for total nitrate plus nitrite, Kjeldahl nitrogen, and total phosphate. EPA is proposing to request the reporting of nitrate plus nitrite, combined rather than separately, because the chemical equilibrium between the two forms can change rapidly when chemical conditions in effluents and receiving waters differ. Such differences can cause concentration ratios between these two nitrogen oxide forms to change rapidly shortly after effluents enter receiving waters. Thus, separately knowing the effluent concentrations of nitrate and nitrite often bears little significance to their likely concentrations shortly after discharge into receiving waters. Kjeldahl nitrogen concentrations (a measure of organic nitrogen concentrations) are requested to allow permit writers to evaluate the total concentration and total mass of nitrogen discharged, determined by summing concentrations of discharged ammonia, nitrate plus nitrite, and Kjeldahl nitrogen, when all are reported in equivalent nitrogen concentrations ($\text{NH}_3 - \text{N}$ and $\text{NO}_2 + \text{NO}_3 - \text{N}$). Phosphate is to be reported in equivalent phosphorus concentrations ($\text{PO}_4 - \text{P}$). Concentrations of elemental phosphorus in most effluents occur at less than potentially toxic levels; consequently, no reporting requirements are proposed for elemental phosphorus.

The Gold Book also provides criteria values on concentrations of oil and grease. Concentrations of oil and grease sufficient to create a sheen on the receiving water not only affect aesthetic

qualities of these waters, but may also reduce the re-aeration rate of the receiving waters, potentially contributing to dissolved oxygen sag problems. Oil and grease may also indicate the presence of other high-molecular-weight organic pollutants of concern, because they are often discharged with or act as a sink for such pollutants. Finally, oil and grease interfere with POTW operations. Therefore, today's proposal includes monitoring and reporting requirements regarding concentrations of oil and grease.

Standard Form A currently requires applicants to test for most of the parameters discussed above. Today EPA is proposing to delete reporting requirements for the following parameters, which are currently included on the list for which sampling is required on Standard Form A:

- Chemical Oxygen Demand
- Fecal Streptococci
- Settleable matter
- Total Coliform Bacteria
- Total Organic Carbon
- Total Solids

EPA is proposing to delete chemical oxygen demand (COD) and total organic carbon (TOC) because biochemical oxygen demand (BOD_5 or CBOD_5) is generally more relevant to municipal treatment systems. EPA is proposing to delete settleable matter and total solids because there is considerable overlap between these parameters and total suspended solids and total dissolved solids. The Agency believes that the two selected parameters provide sufficient information to permit writers. Finally, the Agency proposes to drop reporting requirements for fecal streptococci and total coliform bacteria because the Agency believes that the selected pathogens (*E. coli*, enterococci, and fecal coliform) are better indicators for risk. The Agency requests comments on its proposal to delete the above Standard Form A parameters from the proposed application requirements.

In addition to the parameters discussed above, Standard Form A requires that POTWs indicate the presence of (but not provide quantitative data for) certain pollutants, if known. Such pollutants include metals, as well as other toxic and non-conventional pollutants. The Agency is proposing to require that some POTWs sample and report on certain toxic (priority) pollutants, as described in the discussion, "Reporting of Additional Pollutants for Some POTWs" (at III.B.3.b). The Agency is proposing, however, not to include POTW reporting requirements for the following pollutants listed on Standard Form A:

Bromide
Chloride
Fluoride
Sulfide
Aluminum
Barium
Boron
Cobalt
Iron
Manganese
Titanium
Tin
Algicides
Chlorinated Organic Compounds
Pesticides
Surfactants
Radioactivity

A number of these parameters (including bromide, chloride, boron, cobalt, iron, manganese, titanium, and tin) are proposed for deletion because they are relatively less toxic than priority pollutants for which the Agency is proposing to require testing (see, "Reporting of Additional Pollutants for Some POTWs" (at III.B.3.b)); and the levels of these pollutants in most municipal discharges are low. EPA is proposing to delete algicides, pesticides, and chlorinated organic compounds because the Agency does not believe it is relevant to ask for information about these contaminants at this level of generality.

EPA considered, but does not include as part of today's proposal, requirements that all applicants test and report on sulfide and sulfate concentrations in effluents. Sulfide is of concern because the anaerobic decomposition of sewage and other naturally deposited organic material is a major source of hydrogen sulfide. EPA considered proposing monitoring requirements for sulfate because high sulfate concentrations, which are caused by sewer corrosion, are converted anaerobically to hydrogen sulfide. Hydrogen sulfide is toxic to aquatic life; it also biologically reoxidizes on sewer walls that are exposed to air, forming sulfuric acid that corrodes the concrete of the sewer channels. It was considered that, based on this monitoring information, the permit writer could set permit limits for sulfide and sulfate or to require appropriate best management practices. These monitoring requirements, however, were not included as part of today's proposed requirements because of the view that sulfide is rapidly converted to sulfate in aerobic waters, which rapidly dissipates its toxic risk. In most instances, maintaining monitoring requirements and permit limits for dissolved oxygen to maintain attainable uses of receiving waters will adequately safeguard receiving waters

from toxic risks due to sulfide or sulfate potentially contained in effluents. Regarding corrosivity within the sewer system, the Agency believes that, in general, the POTW is in a better position than the permit writer to address such concerns. Special considerations may lead to the requirement that some applicants submit analytical results for these chemicals, as determined on case-by-case basis. EPA invites comment on these conclusions.

The Agency also considered testing for surfactants, but is not proposing to require such testing as part of this rule because: most POTWs do not discharge surfactants at toxic levels; the Agency has not developed water quality criteria for surfactants; and sources are difficult to control. In cases where surfactants in municipal wastestreams occur at toxic levels, the Agency believes that whole effluent toxicity (WET) testing should reveal any toxicity arising from surfactants. EPA invites comment on this approach.

The Agency also considered including monitoring requirements for three additional nonconventional pollutants: aluminum, barium, and fluoride; because of their regular appearance in analytical results from the numerous pollutant scans reviewed during preparation of the proposed rule and because published criteria exist for these three conventional pollutants. But such requirements have not been included on the proposed rule for the following reasons:

(1) Toxicity problems related to excess aluminum concentrations, especially for aquatic organisms, occur primarily in acidic receiving waters (most often in waters with pH less than 6.0) having low hardness levels (i.e., concentrations of calcium less than 2.0 mg/l). The majority of effluent water analyses reviewed did not contain sufficient aluminum concentrations to likely impair beneficial uses of receiving waters;

(2) Although barium regularly appeared in the pollutant scans of effluents reviewed by EPA, the concentrations reported in all samples remained below the 1.0 mg/l Gold Book criterion value for barium in domestic water supplies; and

(3) According to the 1972 "Blue Book", potentially adverse physiological effects due to excess fluoride concentrations increase with increasing environmental temperatures. Consequently, recommended criteria for fluoride range from 1.4 to 2.4 mg/l for average annual air temperatures of 50 to 91°F. Concentrations for the majority of reported results from the many pollutant analyses reviewed by EPA

revealed that although fluoride was a regular constituent of effluents, in the majority of the instances it occurred at concentrations less than suggested Blue Book criteria.

At this time, based on information currently available to EPA, concentrations of aluminum, barium, and fluoride in the majority of effluents are generally less than those necessary to produce significant risk for beneficial uses of receiving water. As such, EPA concludes at this time that it is unwarranted to require all dischargers to monitor for these chemicals as part of the municipal application process. Individual permit writers can, nevertheless, require analysis of any or all of these chemicals, wherever treatment works or environmental considerations suggest that such requirements are warranted. Further, EPA intends to continually review this conclusion as more effluent monitoring results become available, and continues to seek informed input from outside EPA on this decision.

b. Reporting of Additional Pollutants for Some POTWs

As discussed above, the Agency proposes to require all POTWs to report information on pollutant parameters commonly associated with POTW effluents. Proposed § 122.21(j)(3) (see also, proposed Part A in the Supplemental Application Information part of Form 2A) requires the reporting of additional parameters listed in proposed Appendix J, Table 2, by those POTWs that the Agency believes are most likely to discharge toxic pollutants to receiving waters. Toxic pollutants may interfere with POTW performance or pass through the POTW to receiving waters, thus potentially causing adverse water quality impacts.

Certain POTWs discharge toxic organic and inorganic pollutants primarily as a result of contributions from non-domestic sources. Section 122.21(j)(3)(iii) of today's proposal requires the applicant to submit monitoring data for the pollutants listed in proposed Appendix J, Table 2, if the POTW meets any one of the following criteria: (1) The POTW has a design flow rate equal to or greater than 1.0 mgd; (2) the POTW has a pretreatment program or is required to have one under 40 CFR Part 403; or (3) the POTW is otherwise required to submit this data by the permitting authority.

POTWs with a design flow equal to or greater than 1.0 mgd are designated as "major" POTWs by the Agency. EPA estimates that roughly 25 percent of the approximately 16,000 POTWs nationwide have design flows of at least

1.0 mgd. The Agency has found that major POTWs have a high potential to discharge toxic pollutants because of the strong likelihood that they receive industrial wastewaters and because of the large number of substances entering the treatment works from various sources. Therefore, the Agency believes that it is necessary to collect toxic pollutant data from these POTWs.

EPA also proposes to require data on toxic pollutants from POTWs that are required to develop pretreatment programs under 40 CFR Part 403. A POTW is required to develop a pretreatment program if it receives discharges from significant industrial users that may interfere with the POTW or pass through the treatment works. Approximately ten percent (approximately 1,500) of all POTWs have or are required to develop pretreatment programs. Most POTWs with pretreatment programs are also major POTWs, and so this criterion only slightly expands the requirements of this provision.

In addition to POTWs with design flows greater than or equal to 1.0 mgd and POTWs with pretreatment programs, EPA is proposing to allow the permitting authority to require any other POTW to submit monitoring data for some or all of the pollutants listed in proposed Appendix J, Table 2. The Agency would recommend that the permitting authority require an applicant to perform a complete or partial pollutant scan if toxicity is known or suspected in a POTW's effluent. Alternatively, if the facility's effluent causes adverse water quality effects, or if the POTW discharges to an impaired receiving water, the permit writer could require the applicant to provide analytical results from a complete pollutant scan.

The permit writer could also require the applicant to test for these parameters depending on the number or kinds of industrial users. EPA is proposing to grant the permit writer such discretion because smaller POTWs that receive industrial contributions also have the potential to discharge toxic pollutants. Although a POTW with a design flow less than 1.0 mgd may not have as great a volume of toxic pollutants entering its treatment system as a larger POTW, the impact of its industrial users could easily be more pronounced due to other considerations, such as smaller treatment capacity or an effluent-dominated receiving stream. Testing for toxic pollutants would provide the information needed to write a protective permit for such a POTW.

The Agency solicits comments on the above criteria for determining which

POTWs must test effluent for the pollutants in proposed Appendix J, Table 2. The Agency also solicits comment on whether other POTWs should be required to sample for some or all of these pollutants. Alternatively, the Agency solicits comment as to whether other POTWs should be required to provide any existing data on these pollutants. Such data would be important information in conducting watershed assessments.

The proposed approach for determining which POTWs must submit data on toxic pollutants is not the only approach being considered by the Agency. Among the alternatives being considered is one that would expand upon the approach described above, and require toxics data from two groups of non-pretreatment minors, each of which includes about half of all minor POTWs. In this approach, POTWs with a population between 1,000 and 10,000 (and not otherwise required to report as described above) would be required to provide a single pollutant scan for the Metals, Cyanide, and Total Phenols and the Volatile Organics groups in proposed Appendix J, Table 2. POTWs with a population of less than 1,000 (and not otherwise required to report as described above) would be required to provide a single scan for certain metals (i.e., cadmium, chromium, copper, lead, nickel, zinc, silver, and mercury). The Agency specifically solicits comment on this alternative approach. Commenters are requested to address the suggested cutoff points for different levels of reporting, the pollutants for which reporting is suggested, and the number of samples that should be required.

EPA proposes that POTWs meeting the three criteria enumerated above monitor for the pollutants in proposed Appendix J, Table 2, and any other pollutants for which there are established State water quality standards. Proposed Table 2 is a subset of the priority pollutants list previously described. As discussed in the background discussion of this preamble, these pollutants are regulated under the CWA and have been identified by Congress and/or EPA as potential threats to human health or aquatic life. Proposed Table 2 also includes total phenols, a parameter commonly used as an indicator pollutant for certain priority pollutants. Also as discussed, EPA and most States have developed numeric criteria and standards for most of these pollutants.

Proposed Appendix J, Table 2 represents pollutants that have been identified in priority pollutant scans of effluent from POTWs. Permit writers will be able to use data on these

pollutants as a basis to derive appropriate permit limits.

The Agency is proposing to not require pollutant data for certain priority pollutants (i.e., dioxin, asbestos, and priority pollutant pesticides). Available information on the occurrence of asbestos, dioxin, and priority pollutant pesticides reveals that these pollutants rarely occur at detectable levels in POTW effluents. Absent information to the contrary, the Agency does not consider asbestos to be a pollutant of concern in municipal wastewater effluents. Dioxin, while nearly ubiquitous, is present in such minute amounts in those industrial outfalls where it is known to be present in relatively high concentrations, that the Agency does not believe that, in general, it is appropriate to require POTWs to monitor for the pollutant at the POTW outfall, due to the high level of dilution in municipal wastestreams. Permitting authorities may wish to require such monitoring on a case-by-case basis if there is reason to believe that dioxin may be present in measurable amounts. To the extent that priority pollutant pesticides, including, for example, DDT and PCBs, appear in municipal wastestreams, the Agency believes that their presence is due, for the most part, to background concentrations, rather than to new introductions by discharges to the POTW. Where these pesticides result in toxicity problems or where other conditions merit, the Agency believes that permitting authorities should require sampling for them on a case-by-case basis. In the alternative, the Agency is considering adding pesticides to the list of required pollutants in proposed Appendix J, Table 2. The Agency solicits comment on whether routine monitoring and screening should be required for pesticides from all POTWs meeting the criteria of proposed § 122.21(j)(3)(iii) or whether the proposed approach is the appropriate one.

EPA also solicits comment on alternative ways to collect information in permit application about pollutants that occur in low levels, such as dioxin, or that otherwise present water quality concerns even in highly dilute effluent. As discussed previously, the proposal would require information about significant industrial users from certain POTWs so the permit writer should have sufficient knowledge about the potential for pass through of such pollutants. The Agency is interested in commenters' views on the adequacy of SIU identification for the purposes of developing adequate POTW permit limitations. Proposed § 122.21(j)(3)

would also require that POTWs meeting the above criteria monitor for pollutants not listed in proposed Appendix J, Table 2, for which the State or EPA have established State water quality standards (see discussion in Background section of this preamble). A number of States have established water quality standards for pollutants not listed as CWA sec. 307(a) priority pollutants. For the reasons stated in the above paragraph, the Agency believes that it is appropriate to require sampling for these pollutants, as well.

In addition, EPA considered, but is not proposing, requiring applicants to monitor for other pollutants, such as those on the "Gold Book" list of Federal Water Quality criteria, those regulated under the Safe Drinking Water Act, or those on data bases such as the Toxics Release Inventory System (TRIS), the Aquatic Toxicity Information Retrieval data base (AQUIRE), and the Integrated Risk Information System (IRIS). The Agency determined that adding these other pollutants to the list of pollutants proposed would impose additional monitoring and reporting requirements on the applicant, at substantial additional cost, but without significant benefit. Additionally, not all pollutants on these lists have been assigned numeric criteria. Moreover, available information reviewed by EPA does not indicate that these chemicals occur with either sufficient frequency or at high enough concentrations in typical POTW effluents to support their inclusion among pollutants for which monitoring is proposed to be uniformly required.

Under today's proposal, in proposed 122.21(j)(3)(v), permit writers would have the option to require monitoring and reporting for any other potentially toxic chemicals for which the authority has a reasonable basis to suspect that such materials may be contained in POTW effluents. Such basis could include the presence of industrial users known to release chemicals not included among the pollutants for which routine analyses are otherwise required. EPA invites comments on all aspects of this proposal that would allow for case-by-case information requests that might otherwise extend the time involved in streamlined permit issuance procedures.

In addition, EPA solicits comment on whether to require applicants to summarize and report, as part of the application process, analytical results for any toxic pollutant determined during the three-year period preceding the application to be a known or likely constituent of the facility's discharge. That is, when an applicant has reason to know or suspect the presence of other

toxic constituents in their effluents, its reporting requirements would not necessarily be limited either to the general list of toxic pollutants provided by proposed Appendix J, Tables 1 and 2, or to specific monitoring requirements placed on the applicant by the permitting authority. EPA considers results from toxic release inventory (TRI) as providing one likely basis for information that could cause applicants to initiate additional effluent monitoring analyses during the application process.

Finally, the Agency is interested in providing flexibility where POTWs can demonstrate that the risk of occurrence of pollutants in the discharge is sufficiently small. The Agency seeks comment on whether POTWs could be exempted from providing information on specific pollutants where there are statistically valid data to allow the permitting authority to predict the absence of particular pollutants. In addition, EPA solicits comments on the appropriateness of exempting POTWs from providing information about certain contaminants which are detectable in only a small fraction of POTWs (e.g., less commonly occurring metals such as antimony) and which would not be expected to occur based on other data about the POTW or the indirect discharge.

Other approaches to collecting pollutant data were considered for proposal. EPA solicits comment on each of these, as follows:

A. Types of Industrial Contributors

This approach would have required monitoring for specific pollutants, depending on the identity of industrial users discharging to the POTW. Although this approach was supported by a number of commenters in the course of our outreach efforts, it appeared to be too difficult to implement for non-pretreatment POTWs. Non-pretreatment POTWs are not required to do user inventories of, for example, all categorical industries, and thus would probably be unaware of what monitoring data to provide. On the other hand, pretreatment POTWs would be required to provide entire priority pollutant scans if they had only 2-3 different types of industries. The Agency solicits comment on how, specifically, such an approach would work and how it would benefit applicants and provide permit writers with appropriate information.

B. TRI as a Basis for Determining Additional Pollutants for Sampling

It was suggested that we use TRI data to determine what additional pollutants for which to require sampling. Although

industrial user TRI reports are not currently provided to POTWs by TRI-reporting industries, such reporting could be required, for example, through the pretreatment program. Of course, permit writers may always request TRI data from EPA. At issue is whether the applicant should be required to provide additional monitoring data for pollutants reported through TRI. The Agency solicits comment as to whether this approach might be feasible and whether it would provide useful information to the permit writer that is not otherwise available.

C. Existing Pollutant Data from SIUs

In order to obtain information on pollutants that occur in POTW discharges in low concentrations, permit writers could make use of information provided to POTWs by SIUs during the term of the existing permit. The Agency solicits comment on this approach, and is particularly interested in whether such information could be provided in lieu of requiring end-of-pipe effluent data for certain pollutants (e.g., dioxin, pesticides, or other organic chemicals received principally from industrial sources).

D. Ambient Data

Another issue considered was whether or not to require POTWs to provide the results of ambient monitoring as part of the permit application. Although some have suggested that this information would be helpful for implementation of the watershed approach, States were generally opposed to requiring POTWs to collect ambient data. The view was expressed that it is the permitting authority's responsibility to collect this information, and not the POTW's responsibility to provide it. Nevertheless, the Agency is interested in soliciting comment as to whether such data should be required.

E. Bioaccumulation Data

Although analytical methods to assess bioaccumulation in the aquatic biota are available, they are costly compared to approved test methods for pollutants in effluent. Since WET tests are an indirect indicator for human health risks, the Agency is not proposing to require bioaccumulation data from POTWs. However, such data are directly relevant to human health risk considerations. Therefore, the Agency solicits comment on whether to require bioaccumulation data. Because of cost considerations, the Agency also solicits comment as to what tradeoffs, in terms of other types of reporting, might make such an approach acceptable.

4. Effluent Monitoring For Whole Effluent Toxicity

As discussed in the background section, the July 24, 1990, amendments to the General Pretreatment Regulations require that certain POTWs provide the results of whole effluent biological toxicity testing as part of their NPDES permit application (40 CFR 122.21(j) (1)–(3)). Such testing was required to have been conducted since the last NPDES permit reissuance or permit modification, under 40 CFR 122.62(a), whichever occurred later.

In today's proposed rule, EPA proposes to revise this provision. Proposed § 122.21(j)(4) sets forth these revised requirements. First, all POTWs are required to identify any biological tests the applicant believes to have been conducted within three years of the date of application.

Second, as in the existing regulation, the following POTWs would be required to conduct and provide the results of whole effluent biological toxicity (WET) tests:

(A) All POTWs with design influent equal to or greater than one million gallons per day;

(B) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program;

(C) Other POTWs, as required by the Director, based upon consideration of the following factors:

(1) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment facility, and types of industrial contributors);

(2) The dilution of the effluent in the receiving water (ratio of effluent flow to receiving stream flow);

(3) Existing controls on point or non-point sources, including total maximum daily load calculations for the water body segment and the relative contribution of the POTW;

(4) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, one of the Great Lakes, or a water designated as an outstanding natural resource; or

(5) Other considerations (including but not limited to the history of toxic impact and compliance problems at the POTW), which the Director determines could cause or contribute to adverse water quality impacts.

The Agency specifically solicits comment on whether the requirement to conduct WET testing should be extended to other POTWs. The Agency is considering several options, including:

(1) requiring all minor POTWs not covered under the above criteria to submit the results of a minimum of one WET test, so as to allow the permitting authority to scan for minor POTWs that may have toxicity problems; and

(2) where a State has identified a watershed as a priority watershed, requiring one or more WET tests for all POTWs discharging to the watershed.

Third, the Agency proposes to require WET tests for each outfall from the treatment works (not including CSOs), with exceptions for identical outfalls similar to those proposed for pollutant specific data, as discussed above. Proposed § 122.21(j)(4) would require that data be separately provided for each outfall through which treated sanitary effluent is discharged to waters of the United States. EPA proposes to allow the applicant, where the POTW has two or more outfalls with substantially identical effluents discharging to the same receiving stream, and with the approval of the permitting authority on a case-by-case basis, to provide the results of WET testing from only one outfall as representative of all such outfalls. For outfalls to be considered substantially identical, they should at a minimum be located at the same treatment plant, be subject to the same level of treatment and have passed through the same types of treatment processes. The Agency solicits comment on this approach and, particularly, on whether WET test data should be separately collected from all such outfalls.

The existing WET testing requirements do not specify the number or frequency of tests required, the number of species to be used, or whether to provide the results of acute or chronic toxicity tests. Proposed § 122.21(j)(4) sets minimum reporting requirements of four quarterly tests for a year, using multiple species (no less than two species, e.g., fish, invertebrate, plant), and testing for acute or chronic toxicity, depending on the range of receiving water dilution. This proposal is based in part on Agency guidance, and in part on Agency experience in the implementation of that guidance.

In March 1991, EPA issued guidance establishing Agency policy for WET testing protocols (see "Technical Support Document for Water Quality-Based Toxics Control (1991)," or "TSD"). In that document, the Agency recommended "as a minimum that three species (for example, a vertebrate, an invertebrate, and a plant) be tested quarterly for a minimum of a year" (see, TSD p. 58). In making this recommendation, the Agency explained that the use of three species is more

protective than two species since a wider range of species sensitivity can be measured. In practice, however, a number of permitting authorities are only requiring the use of two species. Since existing requirements for using three species are less common, the Agency proposes to require the use of "multiple species." The Agency proposes this as a minimum requirement, and does not intend it as a change in the policy recommendations outlined in the TSD.

In setting a minimum frequency of quarterly testing for a year, the Agency indicated that this was recommended to adequately assess the variability of toxicity observed in effluents, as follows:

Below this minimum, the chances of missing toxic events increase. The toxicity test result for the most sensitive of the tested species is considered to be the measured toxicity for a particular effluent sample.

The data generation recommendations * * * represent minimum testing requirements. Since uncertainty regarding whether or not an effluent causes toxic impact is reduced with more data, EPA recommends that this test frequency be increased where necessary to adequately assess effluent variability. If less frequent testing is required in the permit, it is preferable to use three species tested less frequently than to test the effluent more frequently with only a single species whose sensitivity to the effluent is not well characterized. (TSD, p. 59)

It is the Agency's understanding that many permitting authorities currently require quarterly testing. While other permitting authorities require less frequent monitoring, at least from some facilities, in many instances such information is being collected on a yearly basis. This proposal would only require one cycle of quarterly testing within three years of the date of the permit application (i.e., only once in five years). The Agency solicits comment on whether this is an appropriate frequency, and specifically whether permitting authorities should be allowed to waive quarterly testing on a case-by-case basis. Commenters should indicate what specific criteria would have to be met for such a waiver.

The current whole effluent toxicity testing requirements, at § 122.21(j), do not specify whether applicants should test for acute or chronic toxicity. An acute toxicity test is defined as a test of 96-hours or less in duration in which lethality (of the test organism) is the measured endpoint. A chronic toxicity test is defined as a long-term test in which sublethal effects, such as fertilization, growth, and reproduction, are usually measured, in addition to lethality. (TSD, p.4.)

The Agency proposes that testing for acute or chronic toxicity be based upon the ratio of receiving water to effluent at the edge of the mixing zone. The term "mixing zone" refers to an area around an outfall within which a State may allow ambient concentrations above water quality criteria levels. States may have two or more mixing zones (e.g., an acute mixing zone, beyond which acute criteria must be met, and a chronic mixing zone, beyond which chronic criteria must be met). Not all States allow calculation of effluent limitations using mixing zones, and mixing zones are not universally allowed by States that do allow use of mixing zones. For purposes of determining whether acute or chronic toxicity testing is appropriate, the ratio of receiving water to effluent should be considered at the point nearest to the outfall where water quality criteria are required to be met. This proposal incorporates the recommendations of the 1991 TSD, which stated that applicants should conduct acute or chronic testing based upon the following dilutions:

(A) Acute toxicity testing if the dilution of the effluent is greater than 1000:1 at the edge of the mixing zone;

(B) Acute or chronic toxicity testing if the dilution of the effluent is between 100:1 and 1000:1 at the edge of the mixing zone. Acute testing may be more appropriate at the higher end of this range (1000:1), and chronic testing may be more appropriate at the lower end of this range (100:1); and

(C) Chronic testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone. (See TSD, pp. 58–59.) In order to determine the proper dilution ratio, measurement should be made at the point where chronic criteria apply. Thus, where there is a chronic mixing zone, the dilution ratio should be measured at the edge of the chronic mixing zone. It may be inappropriate to use an acute test if there is too little dilution.

Although the Agency is not proposing to require that applicants follow these recommendations, the Agency believes that they are reasonable, based on the discussion in the TSD. For example, with regard to the use of chronic toxicity testing where the dilution ratio falls below 100:1, the Agency stated, "[t]he rationale for this recommendation is that chronic toxicity has been observed in some effluents down to the 1.0 percent effect concentration. Therefore, chronic toxicity tests, although somewhat more expensive to conduct, should be used directly in order to make decisions about toxic impact." (TSD, p. 59.) The Agency solicits comment as to whether these

recommendations should instead be added as requirements in the final rule.

The whole effluent toxicity testing requirements that currently exist, at § 122.21(j), do not specify which information must be reported as a result of such testing. To clarify reporting requirements for the applicant and the permit writer, EPA today proposes specific reporting requirements in § 122.21(j)(4). First, applicants required to perform WET tests under the proposed rule are required to indicate the number of tests performed since permit reissuance and since any modification of the permit pursuant to 40 CFR 122.62(a). It is up to the permitting authority to determine whether previously submitted results provide the equivalent of the information proposed to be required. Proposed § 122.21(j)(4)(v) sets forth in detail the information that the Agency believes will provide the permit writer with adequate information to determine whether the test was conducted in accordance with EPA methods and protocols and whether the reported results are otherwise valid. The Agency solicits comment on whether the information requested is the proper information to require or whether other information should be required, including for purposes of quality assurance. As in the current regulatory requirements, in conducting the testing, applicants must use EPA-approved methods. The Agency solicits comment on this approach.

Where biomonitoring data have been submitted to the permitting authority within three years of the permit application, applicants would be required to provide the dates on which such data were submitted and a summary of the results of each such test. Where any WET test conducted within three years prior to the permit application reveals toxicity, proposed § 122.21(j)(4)(vi) would require that applicants, at a minimum, provide any information they may have on the cause of toxicity. Further, applicants would be required to provide written details of any toxicity reduction evaluation conducted. Toxicity reduction evaluations (TREs) are used to investigate the causes and sources of toxicity and identify the effectiveness of corrective actions to reduce it. The purpose of a TRE is to help bring dischargers into compliance with water quality-based whole effluent toxicity requirements where monitoring indicates unacceptable effluent toxicity. The permitting authority may require a permittee to conduct a TRE in those cases where the discharger is unable to adequately explain and immediately

correct non-compliance with a whole effluent toxicity permit limit or requirement. TREs may be required of permittees under existing permits or through a variety of other legally binding mechanisms. Since the results from TREs may have considerable impact in the evaluation of municipal permit applications, this kind of information would need to be available to the permit writer. It is recommended that applicants conducting a TRE at the time of permit application would provide a brief summary of the status and results from the ongoing TRE.

The Agency solicits comment on all of the above proposed revisions to the existing WET test requirements.

5. Industrial Discharges, Pretreatment, and RCRA/CERCLA Waste

Today's proposed rule would require applicants to provide information on industrial (non-domestic) discharges to the POTW, particularly discharges from significant industrial users (SIUs). This information is to be required by proposed § 122.21(j)(5).

Proposed § 122.21(j)(5)(i) would require the applicant to list the total number of significant industrial users (SIUs) and categorical industrial users discharging to the POTW, to estimate the average daily flow from these users and from all industrial (non-domestic) users, and to estimate the percent of total influent contributed by each class of users. This information provides the permit writer with a means of determining the relative impact, individually and collectively, of industrial contributions to the POTW.

As defined in 40 CFR 403.3, the term "industrial user" means "a source of indirect discharge," which in turn is defined as the introduction of pollutants into a POTW from any non-domestic source regulated under sec. 307(b), (c), or (d) of the CWA. In general, this term encompasses industrial and commercial sources of toxic pollutants discharging to POTWs. Commercial entities such as hospitals, nursing homes, restaurants, offices, and stores may be included.

A categorical industrial user is any discharger subject to categorical pretreatment standards under 40 CFR 403.6 and 40 CFR Chapter I, Subchapter N. "Significant industrial user" is defined at 40 CFR 403.3(t) as any categorical industrial user and any other industrial user that:

(1) discharges an average of 25,000 gallons per day or more of process wastewater to the POTW (excluding sanitary, non-contact cooling and boiler blowdown wastewater);

(2) contributes a process wastestream which makes up 5 percent or more of

the average dry weather hydraulic or organic capacity of the POTW; or

(3) is designated as such by the control authority (40 CFR 403.12(a)) because of a reasonable potential to adversely affect the POTW's operation or violate pretreatment requirements.

Proposed § 122.21(j)(5)(ii) would require POTWs with approved pretreatment programs to describe any substantial modifications to the POTW's pretreatment program that have not yet been approved in accordance with 40 CFR 403.18. EPA is considering revising the pretreatment regulations to streamline approved program requirements. Such revisions may make the need for this information unnecessary.

Proposed § 122.21(j)(5)(iii) would require information on individual significant industrial users (SIUs) discharging to POTWs. This provision is similar to questions currently found on Standard Form A. The Agency desires to incorporate into the final rule provisions that reduce duplication of effort. One possible way is to allow the applicant to reference substantially similar information about SIUs previously submitted to the permitting authority rather than to resubmit the information. The Agency solicits comments on using this approach in the final rule and suggestions of other possible options. EPA is also considering whether to waive, either entirely or on a case-by-case basis, such reporting for any POTW with an approved pretreatment program under 40 CFR Part 403 that submits an annual report within the year preceding its application to the extent that the annual report contains information equivalent to that required in proposed Section M. The Agency solicits comment on this question.

The proposed provision requires POTWs to provide the following information for each SIU: Name and mailing address, description of the industrial processes affecting the discharge, principal products and raw materials, average daily volume of process and non-process wastewater discharged, and whether the SIU is subject to local limits or categorical pretreatment standards. The description of each SIU's industrial activity and its principal products and raw materials alerts the permit writer to the potential presence of pollutants in the discharge in concentrations that may be of concern to the POTW, and can be useful in establishing permit limits. Information on the average daily volume of process wastewater discharged helps the permit writer to estimate pollutant loads to the POTW. Knowing the

volume of non-process wastewater discharged will alert both the permit writer and the POTW to the possibility of hydraulic overload to the system, and will help the POTW minimize such occurrences.

Currently, Standard Form A requires the applicant to identify the quantities of product manufactured and raw materials used by each SIU. The Agency is not proposing to require this information in today's proposal because neither the amount of production nor the amount of raw materials used necessarily correlates directly to the toxicity of the waste stream. For example, the SIU might use all of the raw material and release little into the waste stream. The Agency is instead requesting a narrative description of products and raw materials involved in the industrial activity.

Standard Form A also requires the applicant to characterize each SIU's industrial discharge. Although this information may be necessary to establish permit limits at some POTWs, this question appears to be unnecessary. In many cases, the permit writer is able to determine parameters of concern from the principal products and raw materials for that industrial user. In other cases the permit writer may request this information on a case-by-case basis.

The proposed provision would also require the applicant to describe any problems at the POTW attributable to wastewater discharged by SIUs. Identification of such problems is necessary to set permit limits for pollutants that the POTW might not adequately remove, and should lead to other strategies for control of toxic pollutants, such as: more stringent local limits or other pretreatment requirements; best management practices, if the toxic pollutants appear to be from diffuse sources; or toxicity reduction evaluations (TRES), if toxicity testing shows that the effluent causes an excursion above water quality standards in the receiving stream. Instances of pass through and interference identified in this step will alert the permit writer to violations of the POTW's NPDES permit.

6. Discharges From Hazardous Waste Sources

Proposed § 122.21(j)(6) would require applicants to provide general information concerning discharges of RCRA hazardous wastes to POTWs and discharges from hazardous waste cleanup or remediation sites. The purpose of this information is to alert the permit writer to potential concerns

regarding the constituents of such discharges.

Proposed § 122.21(j)(5)(i) would require the applicant to provide information about any hazardous wastes, as defined under Subtitle C of the Resource Conservation and Recovery Act (RCRA), or authorized State law, that are delivered to the facility by truck, rail, or dedicated pipe. This requirement does not apply to RCRA hazardous wastes discharged to a sewer system that mix with domestic sewage before reaching the POTW, because the Domestic Sewage Exclusion (sec. 1004(27) of RCRA) provides that solid or dissolved material in domestic sewage is not solid waste as defined in RCRA, and therefore is not a hazardous waste.

If the POTW receives RCRA hazardous waste by truck, rail, or dedicated pipe, the applicant must list, for each waste received, the hazardous waste number, quantity, and method by which it is received. The permit writer would use this information to coordinate appropriate RCRA requirements including, where appropriate, additional permit terms to address such requirements. In addition, this information will enable permitting authorities to identify potential impacts in the POTW's discharge.

In order to establish appropriate permit requirements, the permit writer also needs to be aware of wastewaters discharged to the POTW that originate from remedial activities conducted under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the RCRA corrective action program, or other authorities. POTWs are sometimes used for the disposal of wastewaters generated during remediation of CERCLA (Superfund) sites or during RCRA corrective action activities at industrial facilities. Paragraphs (ii)-(iv), in proposed § 122.21(j)(6), would require the applicant to identify wastewaters from remedial activities known or expected to be received during the life of the permit, the origin of such wastes and the treatment, if known, that such wastes receive prior to entering the POTW. This information is intended to help the permit writer decide whether to establish additional monitoring or permit requirements for the effluent and sewage sludge.

7. Combined Sewer Overflows

In developing permit requirements to meet BAT/BCT using BPJ and to meet applicable water quality standards for CSO discharges, the permit writer requires certain information. To ensure that the permit writer has the necessary

information, EPA proposes to require information that reflects the Agency's 1994 CSO Control Policy (see discussion in background section). This paragraph is intended to complement, and not overlap, other reporting that POTWs may be required to provide by the NPDES authority in accordance with the CSO Control Policy.

Proposed § 122.21(j)(7)(i) would require information about the combined sewer system (CSS), including a system map and system diagram that describe the relevant features of the system. Applicants are also required to identify the number of CSO discharge points to be covered by the permit application. Because municipalities with CSOs often have more than one treatment plant, different POTW permits may include different outfalls from their CSS.

Similarly, proposed § 122.21(j)(7)(ii) would require that applicants provide information on each outfall specifically covered by the application. This includes some locational information similar to that for outfalls of treated effluent in proposed § 122.21(j)(2), paragraphs (i) and (ii). As discussed previously, this sort of locational data is consistent with Agency policy concerning the reporting of such information. It also provides permitting authorities with a means of locating dischargers within the U.S. Soil Conservation Service watershed categorization system, a State's river basin categorization system, and the U.S. Geological Survey cataloging scheme.

This provision would also require information about any monitoring conducted on the outfall by the applicant and any CSO incidents that occurred in the year previous to the permit application. Finally, proposed § 122.21(j)(7)(ii)(E) would require the permittee to identify any significant industrial users (see discussion on pretreatment and industrial user information) that contribute to the CSO and to describe any known water quality impacts, such as beach or shellfish bed closings and fish kills. The Agency considers this to be a minimal amount of information to be provided to the permit writer, inasmuch as the permit writer must have adequate information to specifically authorize discharges at each of the identified outfalls.

8. Contractors

Proposed § 122.21(j)(8) would require the applicant to identify all contractors responsible for any operation or maintenance aspects of the POTW and to specify such contractors' responsibilities. This information

enables the permit writer to determine who has primary responsibility for the operation and maintenance of the POTW, and thus determine whether a contractor should be included on the permit as a co-permittee.

9. Certification

Proposed § 122.21(j)(9) would require the signature of a certifying official in compliance with 40 CFR 122.22, which requires the signature of a certifying official on all NPDES applications. The certification would apply to all attachments identified on the application form, as well as any others included by the applicant.

10. Revision to Pretreatment Program Requirements

Existing § 122.21(j)(iv) requires applicants with a pretreatment program to provide a technical evaluation of the need to revise local limits, under 40 CFR 403.5(c)(1). Since 1990, when that requirement was promulgated, the Agency has received numerous requests to change the provision to make it effective after the date of permit issuance. The concern has been raised that a POTW most needs to review its local limits after permit reissuance, when new permit limits are in place, rather than prior to permit reissuance.

The Agency agrees with these comments and proposes to make this change. In order to be clear, the provision has been reworded and is proposed to be moved to 40 CFR 403.8(f)(4), with the existing POTW pretreatment program requirements. The Agency solicits comment on this approach.

C. Application Requirements for TWTDS (40 CFR 122.21(q))

Under § 122.21(d)(3)(ii), POTWs and other treatment works treating domestic sewage (TWTDS) are currently required to submit the sewage sludge information listed at § 501.15(a)(2) with their permit applications. Today EPA proposes regulatory language at § 122.21(q) to update the information that must be reported. Proposed revised § 501.15(a)(2) would reference the requirements of proposed § 122.21(q). EPA also proposes a new form, Form 2S, for collection of this information. Section (q) would require all TWTDS, except "sludge-only" facilities, to report information regarding sewage sludge generation, treatment, use, and disposal. The permitting authority may also require a "sludge-only" facility to submit a permit application containing this information. These proposed new requirements are intended to clarify existing sewage sludge application

requirements, as necessary to implement the Agency's Part 503 standards for sewage sludge use or disposal.

As with the proposed POTW application requirements, the Agency does not wish to require redundant reporting by TWTDS. Thus, the Agency is proposing to allow a waiver for information required to be reported under § 122.21(q) similar to that proposed for § 122.21(j). This would allow the Director to waive any requirements in proposed paragraph (q) if the Director has access to substantially identical information. The Agency solicits comment on this approach and the proposed conditions for allowing such a waiver.

Also as with the proposed POTW application requirements, the Agency also solicits comment on ways to allow the permit writer or permitting authority discretion in waiving particular information where the permitting authority determines that such information is not necessary for the application. In other words, there may be flexible ways to look at each applicant in light of the overall "matrix of characteristics" regarding a particular facility. Where, for example, historical data indicate that additional sampling is not warranted unless other conditions have changed, the Agency is considering waiving such sampling. Such flexibility would involve a holistic approach to implementing these proposed requirements, and the Agency solicits comment as to ways in which it could be accomplished without making these provisions entirely discretionary, so that one could predict the exercise of discretion. This might be particularly relevant on the second and subsequent rounds of permitting under these proposed provisions. The Agency also seeks comment on what information might be appropriate and what information might be inappropriate for such waivers.

1. Facility Information

Proposed § 122.21(q)(1) would require summary information on the identity, size, location, and status of the facility. Proposed paragraph (ii) would request that the facility location be described by latitude and longitude to the nearest second. This information meets the specifications of EPA's Locational Data Policy and supports the Watershed Protection Approach, by providing permit writers and other Federal and State environmental managers with a means of geographically locating potential sources of polluted runoff. EPA believes that this change would

merely clarify, without expanding, an existing reporting requirement.

2. Applicant Information

Proposed § 122.21(q)(2) would require information concerning the identity of the applicant and its status as a Federal, State, private, public, or other entity.

3. Permit Information

Proposed § 122.21(q)(3) restates the § 501.15(a)(2)(v) requirement that the applicant list the facility's NPDES permit number and any other permit numbers or construction approvals received or applied for under various authorities.

4. Federal Indian Reservations

Proposed § 122.21(q)(4) clarifies existing § 501.15(a)(2)(iv), which asks only "whether the facility is located on Indian Lands." A sewage sludge use or disposal permit, however, may cover activities occurring beyond the boundaries of the "facility." Therefore, the proposed paragraph asks whether any generation, treatment, storage, land application, or disposal of sewage sludge occurs on a Federal Indian Reservation. EPA believes that this information will better enable the permit writer to identify the proper permitting authority and applicable requirements.

5. Topographic Map

Proposed § 122.21(q)(5) would require the applicant to submit the following information on a topographic map (or maps) depicting the area one mile beyond the property boundaries of the TWTDS: All sewage sludge management facilities, all water bodies, and all wells used for drinking water listed in public records or otherwise known to the applicant within 1/4 mile of the property boundaries. This proposed requirement is different from the existing topographic map requirement at § 501.15(a)(2)(vi) in that the proposed requirement asks for information on use and disposal sites rather than just disposal sites. EPA believes that it is just as important to get information on land application sites as on disposal sites. Neither the existing nor the proposed requirements request a map for sites that extend more than a mile beyond the TWTDS's property boundary. The permitting authority could request maps of all use or disposal sites if they believe that this information is necessary to develop adequate permits. EPA requests comments on whether maps should be required for all use or disposal sites, or whether this requirement should be modified in some other way.

6. Sewage Sludge Handling

Proposed § 122.21(q)(6) would require the applicant to prepare a flow diagram, and/or a narrative description that identifies all sewage sludge management practices (including on-site storage) to be employed during the life of the permit. EPA believes that this information is necessary because the applicant may employ sewage sludge management practices not covered under the more specific questions proposed in today's rule. To draft a complete permit, the permit writer must be aware of all sewage sludge storage, use, or disposal practices that may have an adverse affect on public health and the environment. EPA requests comments on whether more specific information about on-site and off-site storage of sewage sludge should be required of permit applicants.

7. Sewage Sludge Quality

Currently, § 501.15(a)(2)(vii) requires applicants to report "any sludge monitoring data the applicant may have." However, this requirement neither identifies the parameters that must be reported nor provides a mechanism for reporting this information. Proposed Form 2S and § 122.21(q)(7) would address this need by requiring monitoring data for specific parameters in sewage sludge that is used or disposed.

Proposed paragraph (i) of § 122.21(q)(7) would require all Class I sludge management facilities to submit the results of at least one toxicity characteristic leaching procedure (TCLP) conducted during the last five years to determine whether the sewage sludge is a hazardous waste. The TCLP is described in 40 CFR Part 261, Appendix II, and is a method for determining whether a solid waste exhibits the characteristic of toxicity, in accordance with 40 CFR 261.24. 40 CFR Part 503 does not establish requirements for the use or disposal of sewage sludge determined to be hazardous under the procedures in Appendix II of 40 CFR Part 261 and § 261.24. Hazardous sewage sludge must be used or disposed of in accordance with the hazardous waste regulations in 40 CFR Parts 261–268, or authorized State law. Using the results of the hazardous waste test, the permitting authority will determine which requirements apply to the use or disposal of the applicant's sewage sludge. EPA requests comments on whether facilities should be allowed to use a method other than a TCLP to show that their sewage sludge is non-hazardous and whether non-Class I

sludge management facilities should be required to perform a TCLP.

Proposed paragraph (ii) of § 122.21(q)(7) would require all applicants to submit data on individual pollutants in the sewage sludge. Existing data could be submitted if it were two years old or less. EPA is proposing a two-tier approach for collection of pollutant data that is based on whether the treatment works has an industrial wastewater pretreatment program.

Under the two-tier approach, Class I sludge management facilities would submit sewage sludge data for the pollutants listed in proposed 40 CFR Part 122, Appendix J, Table 2 ("Effluent and Sewage Sludge Parameters for Selected POTWs and Treatment Works Treating Domestic Sewage") and Table 3 ("Other Effluent and Sewage Sludge Parameters for Treatment Works Treating Domestic Sewage and Selected POTWs") and for other selected pollutants, as part of the application for a permit for the use or disposal of sewage sludge. Other TWTDS would be required to submit data for the pollutants regulated in Part 503 and for other selected pollutants.

a. Class I sludge management facilities. A Class I sludge management facility is any POTW required to have an approved pretreatment program under 40 CFR 403.8(a) and any TWTDS classified as a Class I sludge management facility because of the potential for the TWTDS's sewage sludge use or disposal practice to affect public health and the environment adversely. Under today's proposal a Class I sludge management facility would submit sewage sludge concentration data for all the priority pollutants, except asbestos, as listed in Tables 2 and 3 of Appendix J; for the Part 503 pollutants; and for total kjeldahl nitrogen (TKN), ammonia, nitrate, and phosphorus (total).

EPA is proposing to require Class I sludge management facilities to submit data on the priority pollutants because they are known to have adverse effects on human health and the environment and are of concern to the general public. Since sewage sludge from Class I sludge management facilities has an industrial component, it is important to reassure the public that this sewage sludge will not cause harm if it is used or disposed according to Part 503. A pollutant scan every five years should help promote the beneficial use of sewage sludge by demonstrating its quality. If any pollutants that are not regulated by Part 503 show up in the scan, the results would enable the permitting authority to determine whether additional permit

conditions (i.e., in addition to the requirements in Part 503) are necessary to protect public health and the environment.

Many Class I sludge management facilities are already required by their pretreatment program to monitor their sewage sludge for these pollutants. In addition, many State sewage sludge programs require monitoring for some or all of these pollutants. EPA seeks comments on this approach.

Section 405(d) of the CWA contemplates a phased approach to establishing numerical limits for pollutants in sewage sludge that is used or disposed. Moreover, sec. 405(d)(2)(D) of the CWA provides that "[f]rom time to time, but not less often than every 2 years, the Administrator shall review the regulation * * * for the purpose of identifying additional pollutants and promulgating regulations for such pollutants * * *."

The Standards for the Use or Disposal of Sewage Sludge that were published on February 19, 1993, constitute Round One of EPA's sewage sludge standards program. The Agency has identified a tentative list of pollutants for which limits will be established in a Round Two regulation (i.e., an amendment to the Round One regulation) and has announced a tentative schedule for the publication of that amendment.

Pollutants on the tentative list for the Round Two regulation include acetic acid (2,4,-dichlorophenoxy), aluminum, antimony*, asbestos, barium, beryllium*, boron, butanone (2-), carbon disulfide, cresol (p-), cyanide (soluble salts and complexes)*, dioxin/dibenzofuran (all monochloro to octochloro congeners), endsulfan-II, fluoride, manganese, methylene chloride*, nitrate*, nitrite*, pentachloronitrobenzene, phenol*, phthalate (bis-2-ethylhexyl)*, polychlorinated biphenyls (co-planar), propanone (2-), silver*, thallium*, tin, titanium, toluene*, trichlorophenoxyacetic acid (2,4,5-), trichlorophenoxypropionic acid ([2-(2,4,5-)], and vanadium. EPA has indicated that it retains the discretion either to add to or delete pollutants from the above list of pollutants.

The Agency is considering adding the above pollutants to the list of pollutants for which data have to be submitted by Class I sludge management facilities with a permit application. Eleven of the above pollutants are included in Tables 2 or 3 of proposed Appendix J or are nutrients (see pollutants marked with an asterisk). Therefore, this approach would require that Class I sludge management facilities submit data for 20

additional pollutants. The Agency requests comments on this proposal.

b. All TWTDS. Part 503 contains pollutant limits for ten inorganic pollutants for sewage sludge that is land applied (subpart B), three inorganic pollutants for sewage sludge placed on an unlined surface disposal site (subpart C), and five inorganic pollutants for sewage sludge fired in a sewage sludge incinerator (subpart E). There are no pollutant limits in Part 503 for sewage sludge placed on a lined surface disposal site or for sewage sludge placed in a municipal solid waste landfill unit.

The pollutants for which limits are included in Part 503 are arsenic, cadmium, chromium, copper, lead, mercury, molybdenum, nickel, selenium, and zinc. Part 503 also contains an operational standard for pathogens (i.e., fecal coliform, *Salmonella* sp. bacteria, enteric viruses, and viable helminth ova) and for total hydrocarbons (THC). The operational standards for pathogens are values that can not be exceeded in sewage sludge and the operational standard for THC is a value that can not be exceeded in the air emissions for a sewage sludge incinerator stack.

With today's rulemaking, EPA proposes that applicants for a sewage sludge use or disposal permit submit sewage sludge concentration data for all of the Part 503 inorganic pollutants. The permitting authority needs to determine whether a TWTDS can change its use or disposal practice if the need arises. Data for all of the Part 503 pollutants will help the permitting authority make that determination.

The Agency is aware that many TWTDS employ only one sewage sludge use or disposal practice, and that such treatment works may object to submitting data for pollutants that are not regulated for that practice. Nevertheless, EPA believes that the additional information burden to collect and submit data for all of the Part 503 pollutants is offset by the value of the data to the permitting authority. The Agency solicits comments on whether an applicant should be required to submit data only for the pollutants regulated for the TWTDS's use or disposal practice.

As indicated previously, EPA also proposes that all applicants submit sewage sludge data for TKN, ammonia, nitrate-nitrogen, and total phosphorus with a permit application. In addition, the percent solids of the sewage sludge that is used or disposed of would have to be reported. Percent solids is required to ensure that all sewage sludge data can be converted to dry weight values.

Information on the nitrogen and phosphorus content of sewage sludge is needed for several reasons. One important use of the nitrogen data is to help the permit writer to evaluate the design of the agronomic rate for a land application site. Part 503 requires that sewage sludge be land applied at a rate that is equal to or less than the agronomic rate for the application site. The Agency also can use the data on nutrients in sewage sludge in future considerations as to whether to establish limits for nitrogen and phosphorus in sewage sludge.

The Agency is also considering adding certain pathogens to the list of pollutants for which data would be required with an application. These include *Salmonella* sp. bacteria, enteric viruses, and viable helminth ova. Part 503 contains density levels for these microorganisms that cannot be exceeded in sewage sludge that is used or disposed. In addition to pathogens, the Agency is also considering requesting data for fecal coliform, which is used in Part 503 as a pathogen indicator. The permitting authority would use these data to determine whether the sewage sludge meets the Class A or Class B pathogen requirements in Part 503. Pathogen data only would have to be submitted by persons who land apply or place sewage sludge in a surface disposal site. EPA is seeking comments on this issue as part of today's proposal.

Results of current efforts within the Agency may require that limits be established prior to the Round Two sewage sludge regulation, for dioxin/dibenzofuran and co-planar polychlorinated biphenyls (PCBs) in sewage sludge that is used or disposed. Dioxin/dibenzofuran is a carcinogen that is highly toxic in low concentrations. Because the chemical structure of co-planar PCBs is similar to the chemical structure of dioxin/dibenzofuran, they are expected to have similar human health effects (i.e., toxic in low concentrations). Data for these two pollutants could be used to develop Part 503 limits for these pollutants or to evaluate the Part 503 limits. For this reason, the Agency is considering requesting all TWTDS to submit data for these pollutants with a sewage sludge permit application. EPA seeks comments on whether TWTDS who are not Class I sludge management facilities should be required to submit data on these two pollutants.

8. Requirements for a Person Who Prepares Sewage Sludge

Proposed § 122.21(q)(8) identifies permit application information that a person who prepares sewage sludge for

use or disposal would be required to submit. A "person who prepares," as defined at 40 CFR 503.9(r), is "either the person who generates sewage sludge during the treatment of domestic sewage in a treatment works or the person who derives a material from sewage sludge." This section would thus pertain to any POTW or other treatment works that generates sewage sludge. It also would include facilities (such as composting operations) that receive sewage sludge from another facility and then derive a material from that sewage sludge.

Paragraphs (i) and (ii) of proposed § 122.21(q)(8) would request information on the amount of sewage sludge "prepared" at the facility. This includes the amount generated (paragraph (i)) plus any other amount that is received from off-site (paragraph (ii)). These paragraphs are intended to clarify the existing requirement at § 501.15(a)(2)(x), which tells the applicant to report annual sludge production volume. Paragraph (ii) would also solicit information on sewage sludge treatment practices at any off-site facility from which sewage sludge is received. The off-site facility providing the sewage sludge is, by definition, also a "person who prepares," and, therefore, would also be subject to sludge permitting requirements. EPA believes that information on the delivering facility enables the permit writer to assess the quality of sewage sludge received by the applicant. It also fosters more appropriate allocation of permit requirements between the applicant's facility and an off-site "person who prepares."

As in the case of the Municipal Application regulations, the Agency desires to incorporate into the final rule provisions that reduce duplication of effort. One possible way is to allow the applicant to reference substantially similar information previously submitted to a permitting authority rather than resubmit the information. The Agency solicits comments on using this approach in the final rule and suggestions of other possible options.

Before sewage sludge is applied to the land or placed on an active sewage sludge unit, it must meet the requirements for pathogen reduction in § 503.32 and for vector attraction reduction in § 503.33. Therefore, paragraph (iii) of proposed § 122.21(q)(8) would request information on sewage sludge treatment processes at the applicant's facility, including pathogen or vector attraction reduction processes. The permit writer needs to know whether pathogen and vector attraction reduction requirements

are met at the applicant's facility and thus should be addressed in the applicant's permit. If these requirements are not met by the applicant, pathogen and vector attraction reduction must be met by a subsequent "person who prepares" or the owner/operator of a surface disposal site.

"Exceptional quality" (EQ) sewage sludge must meet the ceiling concentrations in 40 CFR 503.13(b)(1), the pollutant concentrations in § 503.13(b)(3), the Class A pathogen requirements in § 503.32(a), and one of the vector attraction reduction requirements in § 503.33 (b)(1) through (b)(8). Because of its high quality, "EQ" sewage sludge is not subject to the general requirements of § 503.12 or the management practices of § 503.14. Therefore, fewer permitting and permit application requirements pertain to facilities generating such sewage sludge. Proposed paragraph (iv) of § 122.21(q)(8) would ask for the amount of sewage sludge that is applied to the land. EPA believes that this information is all that is needed to develop sewage sludge conditions for such a facility. Under paragraph (iv), the applicant would not need to provide the other, more-detailed, information in proposed § 122.21(q)(8) paragraphs (v) and (vi) for sewage sludge meeting "EQ" criteria.

The existing requirement at § 501.15(a)(2)(viii) asks for the "name of any distributors when the sludge will be disposed of through distribution and marketing." This requires the names of any facilities that sell or give away "EQ" sewage sludge. EPA believes that "EQ" sewage sludge should be treated similarly to other fertilizers. Thus, the Agency believes that the names of distributors should not be required and is proposing to delete the requirement at § 501.15(a)(2)(viii). The Agency seeks comments on this approach.

Paragraph (v) of proposed § 122.21(q)(8) would seek information on sewage sludge that is not "EQ," but is nevertheless placed in a bag or other container for sale or give-away for application to the land. Under Part 503, such sewage sludge must meet the Class A pathogen requirements in § 503.32(a) and one of the vector attraction reduction requirements in § 503.33(b)(1) through (8). In addition, the sewage sludge must meet either the pollutant concentrations in Table 3 of § 503.13 or the annual pollutant loading rates (APLRs) in Table 4 of § 503.13. If this sewage sludge meets the Table 3 pollutant concentrations, it is "EQ" sewage sludge and thus would be subject to proposed paragraph (iv). Proposed paragraph (v) would only apply to sewage sludge subject to the

Table 4 APLRs that is placed in a bag or other container for application to the land. EPA proposes to require that the applicant employing this type of sewage sludge use provide the volume of sewage sludge placed in bags or other containers and a copy of all labels or notices that accompany the product being sold or given away.

Paragraph (vi) of proposed § 122.21(q)(8) would seek information about any other "person who prepares" who receives sewage sludge from the applicant's facility. This information helps the permit writer to identify which permit requirements should apply to the applicant and whether the subsequent preparer needs to obtain a permit. Paragraphs (C) and (E) of proposed paragraph (vi) would provide the permit writer with necessary information on the quality of the sewage sludge that is ultimately land applied. This information also enables the permit writer to identify activities of the subsequent "person who prepares" that may subject the applicant to additional regulation or permit requirements. Therefore, these requirements would ensure that the sewage sludge will meet all applicable Part 503 requirements at the time of land application, regardless of the number of parties involved. One possible way to obtain this information is to allow the applicant to reference substantially similar information previously submitted to a permitting authority rather than resubmit the information. The Agency solicits comments on using this approach in the final rule and suggestions of other possible options.

9. Land Application of Bulk Sewage Sludge

Proposed § 122.21(q)(9) would request information on sewage sludge that is land applied in bulk form. This section would apply only where the applicant's permit must contain all applicable Part 503 requirements for land application. This section would not apply if the applicant generates "EQ" sewage sludge subject to proposed § 122.21(q)(8)(iv), or if the applicant places sewage sludge in a bag or other container for sale or give-away for application to the land subject to proposed § 122.21(q)(8)(v). In neither of these cases is it necessary to control the ultimate land application through a permit and thus the applicant would not need to provide this information as part of the application. The section also would not apply if the applicant provides sewage sludge to another "person who prepares" subject to proposed § 122.21(q)(8)(vi). In this case, the ultimate land application would be

controlled by the subsequent "person who prepares."

Paragraph (i) of proposed § 122.21(q)(9) would clarify the existing requirement at § 501.15(a)(2)(x) which tells the applicant to report annual sludge production volume. Paragraph (ii) asks how the applicant will satisfy the § 503.12(i) notification requirement for land application sites in a State other than the State where the sewage sludge is prepared.

Paragraph (A) of proposed § 122.21(q)(9)(iii) would ask the applicant to identify the land application site. This question would request locational information which supports the Watershed Protection Approach, by providing permit writers and other Federal and State environmental managers with a means of geographically locating potential sources of polluted runoff.

Paragraphs (B) and (C) of proposed § 122.21(q)(9)(iii) would ask the applicant to identify the land application site owner and applier, if different than the applicant. EPA believes that this information is necessary in order to ensure that the permit is issued to the correct party. These proposed paragraphs would clarify and expand on existing requirements at § 501.15(a)(2)(viii).

One of the land application management practices in § 503.14 mandates that bulk sewage sludge shall not be applied to land at greater than the agronomic rate. Therefore, paragraphs (D) and (E) of proposed § 122.21(q)(9)(iii) would ask the applicant to identify the type of land application site, the type of vegetation grown on that site, if known at the time of permit application, and the vegetation's nitrogen requirement. This information enables the permit writer to calculate an appropriate permit management practice regarding agronomic rate. EPA recognizes that different crops may be grown on a site during the life of a permit. If the crop for a site is not known or likely to change, the applicant should submit whatever information is available.

Paragraph (F) of proposed § 122.21(q)(9)(iii) would request information on vector attraction reduction measures undertaken at the land application site. Before sewage sludge is applied to the land, it must meet the requirements for vector attraction reduction in § 503.33. These measures may be undertaken either by the "person who prepares" sewage sludge or by the operator of the land application site.

Paragraph (G) of proposed § 122.21(q)(9)(iii) would ask the

applicant to submit any existing ground-water monitoring data for the land application site. Section 503.14(d) states that bulk sewage sludge may not be applied to land at greater than the agronomic rate. Section 503.11(b)(2) explains that "agronomic rate" is the whole sludge application rate that minimizes the amount of nitrogen that passes below the root zone and into the ground water. EPA believes that permitting authorities need to review existing ground-water monitoring data for land application sites in order to ensure that sewage sludge application rates are appropriately protective of ground water.

Section 501.15(a)(2)(ix) asks for information necessary to determine if the site is appropriate for land application and a description of how the site will be managed. This requirement could be interpreted in different ways. Today's rule attempts to clearly specify the site management requirements in proposed paragraphs (D)–(G) of proposed § 122.21(q)(9)(iii). The permitting authority could request other site management information if it is needed to identify appropriate permit conditions.

Proposed § 122.21(q)(9)(iv) would request information that the permitting authority needs in order to verify whether the § 503.12(e)(2)(i) requirement for appliers of bulk sewage sludge subject to cumulative pollutant loading rates (CPLRs) has been met. A cumulative pollutant loading rate, as defined in § 503.11(f) is "the maximum amount of an inorganic pollutant that can be applied to an area of land." This information enables EPA to ensure that the CPLRs are not exceeded when more than one facility is sending sewage sludge subject to CPLRs to the same site.

Proposed § 122.21(q)(9)(v) restates the requirement in existing § 501.15(a)(2)(ix) for information on land application sites not identified at the time of permit application.

10. Surface Disposal

Proposed § 122.21(q)(10) requests information on sewage sludge that is placed on a surface disposal site. By definition, a sewage sludge surface disposal site is a TWTDS. Many surface disposal site owner/operators, however, would not have to complete this section, but would instead submit the limited background information required by § 122.21(c)(2)(iii). The applicant would be required to provide the information requested by proposed § 122.21(q)(10) only if the surface disposal site were already covered by an NPDES permit; if the owner/operator were requesting site-specific pollutant limits; or if the

permitting authority were requiring a full application.

Paragraph (i) of proposed § 122.21(q)(10) would clarify the existing requirement at § 501.15(a)(2)(x) which tells the applicant to report annual sludge production volume.

Paragraph (ii) of proposed § 122.21(q)(10) would require that the applicant provide the name or number, address, telephone number, and amount of sewage sludge placed on each surface disposal site that the applicant does not own or operate. This paragraph would clarify and expand on existing requirements at § 501.15(a)(2)(viii). EPA believes that this information is necessary in order to ensure that the permit is issued to the correct party.

Paragraph (iii) of proposed § 122.21(q)(10) would request detailed information on each active sewage sludge unit at each surface disposal site that the applicant owns or operates. A "sewage sludge unit" is defined in § 503.21(n) as "land on which only sewage sludge is placed for final disposal." A "surface disposal site" is "an area of land that contains one or more sewage sludge units." Information on each active sewage sludge unit is necessary because Part 503 provides for different pollutant limits, monitoring requirements, and management practices for each unit. This information enables the permitting authority to establish proper permit conditions.

Paragraph (I) of § 122.21(q)(10)(iii) would request information on sewage sludge sent to the active sewage sludge unit by any facility other than the applicant's. This information helps the permit writer to determine which requirements apply to the surface disposal site owner/operator and which apply to the facility which sends sewage sludge to the surface disposal site. As previously mentioned, one way to reduce duplicate reporting, is to allow the applicant to reference substantially similar information already submitted to a permitting authority. The Agency solicits comments on using this approach in the final rule and suggestions for other options.

Paragraph (J) of proposed § 122.21(q)(10)(iii) would request information on vector attraction reduction measures undertaken at the active sewage sludge unit. Before sewage sludge is placed on an active sewage sludge unit, it must meet the requirements for vector attraction reduction in § 503.33. Since vector attraction reduction measures may be performed either by the facility preparing sewage sludge or by the surface disposal site owner/operator, EPA believes that both should be

required to supply information on their practices.

Section 503.24(n)(2) requires surface disposal sites to demonstrate by way of a ground-water monitoring program or certification that sludge placed on an active sewage sludge unit does not contaminate the underlying aquifer. In order to ensure that this requirement is implemented, paragraph (K) of proposed § 122.21(q)(10)(iii) would request information on ground-water monitoring programs or certifications. Because many communities rely on ground water as a source of drinking water, EPA believes that this information is necessary to protect public health and the environment.

After August 18, 1993, only surface disposal sites showing good cause may apply for site-specific pollutant limits. Paragraph (L) of proposed § 122.21(q)(10)(iii) would request the information necessary for the permit writer to determine whether such site-specific limits are warranted. This information would include a demonstration that the values for site parameters at the applicant's site differ from those used to develop the surface disposal pollutant limits in Part 503.

11. Incineration

Proposed § 122.21(q)(11) would request information on sewage sludge that is fired in a sewage sludge incinerator. According to § 503.41(k), a sewage sludge incinerator is "an enclosed device in which only sewage sludge and auxiliary fuel are fired." A sewage sludge incinerator is a TWTDS and is required to submit a full permit application.

Paragraph (i) of proposed § 122.21(q)(11) would clarify the existing requirement at § 501.15(a)(2)(x) which tells the applicant to report annual sludge production volume. Paragraph (ii) of proposed § 122.21(q)(11) would require that the applicant provide the name or identifying number, address, telephone number, and amount of sewage sludge fired in each sewage sludge incinerator that the applicant does not own or operate. This paragraph would clarify existing requirements at § 501.15(a)(2)(viii). EPA believes that this information is necessary in order to ensure that the permit is issued to the correct party.

Paragraph (iii) of proposed § 122.21(q)(11) would request detailed information on each sewage sludge incinerator that the applicant owns or operates. Paragraph (B) of proposed paragraph (iii) would request the total amount of sewage sludge fired annually in each incinerator. This information is

necessary because the monitoring requirements for sewage sludge incinerators are based on the total amount fired.

Paragraphs (C) and (D) of proposed § 122.21(q)(11)(iii) would request information on compliance with the beryllium and mercury National Emissions Standards for Hazardous Air Pollutants (NESHAPs). Section 503.43 paragraphs (a) and (b) require compliance with these standards through a cross-reference to 40 CFR Part 61 subparts C and E. If the incinerator is required to perform stack testing, these paragraphs would require the applicant to submit a report of that testing.

Under § 503.43, the pollutant limits applicable to each sewage sludge incinerator are calculated based on factors unique to each incinerator. Paragraphs (E), (F), and (G) of proposed § 122.21(q)(11)(iii) would require each applicant to submit these factors for their incinerator(s). Calculating pollutant limits on an individual basis allows the actual performance of each incinerator and actual site conditions, such as topography, to be taken into account. EPA believes that this is more appropriate than mandating national pollutant limitations for sewage sludge incinerators.

In the development of Part 503, EPA determined that it would be infeasible to establish individual limits for each hydrocarbon in sewage sludge incinerator exit gas. Instead, the Agency adopted a 100 ppm total hydrocarbon (THC) limit and required continuous THC monitoring to show compliance. Part 503 was amended, on February 25, 1994 (59 FR 9095), to allow sewage sludge incinerators whose exit gas does not exceed 100 ppm carbon monoxide (CO) to show compliance with the THC operational standard by monitoring CO instead of THC. Paragraphs (H), (I), and (J) of proposed § 122.21(q)(11)(iii) would request the incinerator information necessary to establish the correct hydrocarbon monitoring requirements.

Many of the incinerator's site-specific factors that are used to calculate pollutant limits and compliance with the operational standard are highly dependent on the temperature at which the incinerator is operated and the rate at which sewage sludge is fed into the incinerator. For most incinerators, these parameters are determined during an initial performance test. In order to appropriately calculate pollutant limits and ensure appropriate pollutant limits and that the incinerator is operated within the parameters of the original performance test, EPA needs to know the information in paragraphs (K)

through (O) of proposed § 122.21(q)(11)(iii).

Paragraphs (P) and (Q) of proposed § 122.21(q)(11)(iii) would request information on the monitoring equipment and air pollution control devices installed on the incinerator. Information on this equipment is necessary to ensure that the facility complies with the management practices at § 503.45.

12. Disposal in a Municipal Solid Waste Landfill

Proposed § 122.21(q)(12) would request information on sewage sludge that is sent to a municipal solid waste landfill (MSWLF). Section 503.4 states that sewage sludge sent to a MSWLF that complies with the requirements in 40 CFR Part 258 constitutes compliance with sec. 405(d) of the CWA. The questions in § 122.21(q)(12) are necessary to ensure the availability of accurate information about a MSWLF and the sewage sludge that is sent there.

Paragraphs (i) and (ii) of proposed § 122.21(q)(12) would clarify existing requirements at § 501.15(a)(2)(v), (viii), and (x) that request information on other permits, the location of disposal sites, and the annual sludge production volume. Paragraph (iii) would request information on the sewage sludge quality to ensure that it is acceptable for a MSWLF. Paragraph (iv) would request available information on whether the MSWLF is in compliance with Part 258.

13. Contractors

Proposed § 122.21(q)(13) would require the applicant to provide contractor information. The applicant would be required to identify all contractors responsible for any operation or maintenance aspects of the TWTDS, and specify their responsibilities. The permitting authority uses this information to determine who has primary responsibility for the operation and maintenance of the TWTDS.

14. Other Information

Proposed § 122.21(q)(14) would require the applicant to report any information necessary to determine the appropriate standards for permitting under 40 CFR Part 503, and any other information the permitting authority may request and reasonably require to assess the sewage sludge use and disposal practices, to determine whether to issue a permit, or to identify appropriate permit requirements. This paragraph restates the existing requirements in § 501.15(a)(2)(xi) and (xii).

15. Signature

Proposed § 122.21(q)(15) would require that a certifying official sign the form in compliance with 40 CFR 122.22. This would ensure that the person signing the form has the authority to speak for and legally bind the permittee.

IV. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 0226.13) and a copy may be obtained from Sandy Farmer, Information Policy Branch; EPA; 401 M St., S.W. (Mail code 2136); Washington, DC 20460; or by calling (202) 260-2740.

This collection of information has an estimated reporting burden averaging 10.7 hours per response, including annual recordkeeping burden. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to Chief, Information Policy Branch; EPA; 401 M St., S.W. (Mail Code 2136); Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

V. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" because it may adversely affect local governments by incrementally increasing permit application costs. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

VI. Executive Order 12875

Under Executive Order 12875 (58 FR 58093 (October 28, 1993)), no executive agency shall promulgate any regulation that is not required by statute and that creates a mandate upon a State, local, or tribal government, unless:

(a) Funds to pay the direct costs associated with the regulation are provided by the Federal Government, or

(b) The agency, prior to promulgation, provides OMB a description of its consultation with representatives of the affected governments, the nature of their concerns, any written communications submitted to the agency by them, and the agency's position supporting the need for the regulation. Each agency is also required to develop an effective process to permit elected officials and other representatives of these governments an opportunity to provide meaningful and timely input on significant unfunded mandates.

As discussed above ("Public Consultation in the Development of Today's Proposal," at I.H.), the Agency consulted with States, local governments, and other parties in the development of this proposed rule. This is further discussed in the discussion below ("Unfunded Mandates Reform Act of 1995 and Consultation with State, Local, and Tribal Governments," at VII).

VII. Unfunded Mandates Reform Act of 1995 and Consultation With State, Local, and Tribal Governments

Title II of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), Public Law 104-4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the Unfunded Mandates Act, EPA generally must prepare a written statement, including a cost-benefit analysis, for

rules with Federal mandates that may result in expenditures to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the Unfunded Mandates Act generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted.

Under section 203 of the Unfunded Mandates Act, EPA must develop a small government agency plan before it establishes regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule does not include a Federal mandate that may result in expenditures of \$100 million or more to either State, local and tribal governments in the aggregate, or to the private sector in any year. To the extent enforceable duties arise as a result of today's proposed rule on State, local and tribal governments, such enforceable duties do not result in a significant regulatory action being imposed upon State, local and tribal governments since the estimated aggregate cost of compliance for them is not expected to exceed \$5.7 million annually. Thus, today's proposed rule is not subject to the written statement requirement in section 202 of the Act.

In compliance with E.O. 12875, which requires the involvement of State, local and tribal governments in the development of certain Federal regulatory actions, EPA conducted a wide outreach effort and actively sought the input of representatives of State, local, and tribal governments in the process of developing the proposed rule. Agency personnel have communicated with State and local representatives in

a number of different forums. For example, EPA staff involved in development of today's proposed rule invited comments on earlier drafts of the proposed rulemaking, forms, and instructions from States and local governments both directly and through organizations such as the Association of Metropolitan Sewerage Agencies (AMSA), the Water Environment Federation (WEF), and the California Association of Sanitation Agencies (CASA). In response to these efforts, the Agency was able to communicate directly, including through meetings and telephone communications, with representatives of a number of interested State and local representatives, including representatives of more than twenty-five local governments. Cities represented in a telephone conference arranged through WEF included Price (UT), Owosso (MI), Saginaw (MI), Rockwood (MI), Grand Rapids (MI), Roseburg (OR), Central Marin San. Dist. (CA), Little Rock (AR), Dallas (TX), Northeast Ohio Regional Sewer Dist. (OH). Cities represented in a meeting with AMSA representatives included Detroit (MI), Boise (ID), City of Los Angeles (CA), Phoenix (AZ), Passaic Valley (NJ), Middleton (NJ), Hampton Roads (VA), Orange County (CA), Anchorage (AK), and Alexandria (VA). Other discussions were held individually with representatives of local governments. The Agency received written comments from AMSA, several cities, and a number of States. In the comments received from States, a number of issues were raised concerning possible impacts on local governments. EPA invited, but did not receive, written comments from the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and the National League of Cities.

Once the proposed rule is finalized, the Agency intends to provide information through a variety of sources, and to educate and advise local governments concerning compliance with the proposed requirements. In the Communication Plan prepared for this proposal, the Agency has outlined which organizations EPA will contact directly concerning the proposal. The same parties will also be contacted directly regarding the final rulemaking. The communication plan is available in the record supporting this proposal. The Agency seeks to assist, educate, and advise applicants on how to comply with the permit application requirements primarily through the instructions to the proposed forms, and seeks comment as to how the

instructions could be improved. Additionally, the Agency intends to provide training for permit writers, so that they can assist, educate, and advise applicants on an as-needed basis when completing their applications.

VIII. Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96-354) requires Federal agencies to consider the effect of proposed rules on small entities. Agencies must consider alternatives to proposed rules that would minimize the economic impact on small entities so long as these alternatives are consistent with the stated objective of the statute under which such rules are developed. However, the requirements of the Regulatory Flexibility Act do not alter standards otherwise applicable to agency action. For example, section 405 of the CWA requires EPA to promulgate regulations that are adequate to protect public health or the environment against reasonably anticipated adverse effects.

In developing these proposed regulations, EPA considered the effects of the proposed regulations on small entities. The regulatory flexibility analysis (RFA) conducted for this proposed rule meets the requirements specified in the "Guidelines for Implementing the Regulatory Flexibility Act" (U.S. EPA, Office of Regulatory Management and Evaluation and Office of Policy, Planning, and Evaluation, April 1992).

Most of the applicants that would be required to complete the municipal and sludge application forms, if finalized, are small entities. For the purposes of the RFA, EPA employs the definition of small government entities that was originally advanced in a related rulemaking. See U.S. EPA, "Regulatory Impact Analysis of the Part 503 Sewage Sludge Regulation," November 25, 1992, for a complete discussion of the development of this definition. For the purposes of this rule, the term "small government entities" is considered to mean small POTWs. Small POTWs are defined as POTWs processing less than 1 million gallons per day (mgd) of wastewater. POTWs of this size generally serve a population of 10,000 people or less. This definition is consistent with the designation of major and minor POTWs under the NPDES program.

The estimate of the number of small POTWs subject to both sets of proposed application requirements is based on the number of minor POTWs. Also, for the purposes of the RFA, the Agency conservatively assumed that all "sludge-only" POTWs are small entities.

Generally, treatment facilities serving large populations (greater than 10,000) generate effluent of sufficient volume that it must be discharged to waters of the U.S., and thus require an NPDES permit. The Agency also assumed for purposes of the RFA that all privately owned treatment facilities are small entities. Overall, EPA estimates that nearly 70 percent of municipal applicants and 74 percent of sludge applicants are small entities.

EPA considered a range of regulatory options for the proposed forms. In this proposal, the Agency has developed a two-tier approach for municipal applicants and a two-tier approach for sludge applicants. Applicants are categorized according to size and whether or not they are required to have a pretreatment program. Under each regulatory option considered, less stringent standards are required for smaller facilities that are less likely to pollute and have a lower capacity to absorb large monitoring costs.

The costs of complying with the proposed application requirements would consist entirely of paperwork and testing costs associated with completing the forms and collecting the required information. Therefore, the costs for these activities estimated in the ICR for this proposed rule are used in the RFA. The five-year compliance cost estimates for POTWs applying for NPDES permits (i.e., for both sets of application requirements) range from \$681 to \$3,627 for small POTWs under the four regulatory options under consideration for the municipal permit application and the three regulatory options under consideration for the sludge application requirements. The five-year compliance cost estimates for the various options under this proposed rule range from approximately \$507 to \$2,849 for small privately owned treatment works. These costs would represent between 0.06 and 0.31 percent of the average annual revenues of small POTWs and small privately owned treatment works. As a percent of average household expenditures on sewage treatment, these figures would range between 0.10 and 0.54 percent for small POTWs and small privately owned treatment works. The five-year compliance costs for sludge-only facilities (i.e., paperwork costs associated with the proposed sludge application requirements) range from \$375 to \$2,809 under the three regulatory options under consideration for small POTWs and from \$299 to \$2,849 for privately owned treatment works. These costs would represent well below 0.5 percent of both the average annual revenues for small treatment works (public and private) and of the

average annual household costs for sewage treatment. Thus, impacts on small treatment facilities and their customers are not expected to be severe.

List of Subjects

40 CFR Part 122

Environmental protection, Administrative practice and procedure, Confidential business information, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control.

40 CFR Part 123

Confidential business information, Hazardous materials, Reporting and recordkeeping requirements, Sewage disposal, Waste treatment and disposal, Water pollution control, Penalties.

40 CFR Part 403

Confidential business information, Reporting and recordkeeping requirements, Waste treatment and disposal, Water pollution control.

40 CFR Part 501

Confidential business information, Environmental protection, Reporting and recordkeeping requirements, Publicly owned treatment works, Sewage disposal, Waste treatment and disposal.

Dated: November 2, 1995.

Carol M. Browner,
Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR Chapter I as follows:

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

* * * * *

1. The authority citation for part 122 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

2. Section 122.2 is amended by revising the definition for "Publicly owned treatment works" ("POTW") and adding a definition for "TWTDS" in alphabetical order to read as follows:

§ 122.2 Definitions.

* * * * *

Publicly owned treatment works ("POTW") means a treatment works as defined by section 212 of the CWA, which is owned by a "State" or "municipality" (as defined by section 502(4) of the CWA). This definition includes any devices and systems used in the storage, treatment, recycling and

reclamation of municipal sewage or industrial wastes of a liquid nature. It also includes sewers, pipes and other conveyances only if they convey wastewater to a POTW Treatment Plant, as defined in § 403.3(p) of this chapter. The term also means the municipality as defined in section 502(4) of the CWA, which has jurisdiction over the Indirect Discharges, as defined in § 403.3(g) of this chapter, to and the discharges from such a treatment works.

* * * * *

TWTDS means treatment works treating domestic sewage.

* * * * *

3–6. Section 122.21 is amended by revising paragraph (c)(2)(i) through (iii) introductory text, paragraph (d)(3), the introductory text of paragraph (f), paragraph (j) and by adding paragraph (q) before the notes to read as follows:

§ 122.21 Application for a permit (applicable to State programs, see § 123.25).

* * * * *

(c) * * *

(2) *Permits under section 405(f) of CWA.* (i) Any existing treatment works treating domestic sewage (TWTDS) required to have site-specific pollutant limits, or requesting such limits, as provided in 40 CFR Part 503, must submit the permit application information required by paragraph (d)(3)(iii) of this section within 180 days after publication of a standard applicable to its sewage sludge use or disposal practice(s). After this 180-day period, TWTDS may only apply for site-specific pollutant limits for good cause and such requests must be made within 180 days of becoming aware that good cause exists.

(ii) Any TWTDS with a currently effective NPDES permit, not addressed under paragraph (c)(2)(i) of this section, must submit the application information required by paragraph (d)(3)(iii) of this section at the time of its next NPDES permit renewal application. Such information must be submitted in accordance with paragraph (d) of this section.

(iii) Any other existing TWTDS not addressed under paragraphs (c)(2)(i) or (ii) of this section must submit the information listed in paragraphs (c)(2)(iii)(A) through (E) of this section, to the Director within 1 year after publication of a standard applicable to its sewage sludge use or disposal practice(s), using Form 2S or another form approved by the Director. The Director shall determine when such TWTDS must apply for a permit.

* * * * *

(d) * * *

(3)(i) All applicants for EPA-issued permits, other than POTWs, new sources, and TWTDS, must complete Forms 1 and either 2B, 2C, or 2E of the consolidated permit application forms to apply under § 122.21 and paragraphs (f), (g), (h), and (i) of this section.

(ii) All POTWs must submit the application information required by paragraph (j) of this section, within the time periods established in paragraph (c)(2) of this section, using Form 2A or another form approved by the Director. All POTWs applying for EPA-issued permits must complete Form 2A.

(iii) All TWTDS, except "sludge-only facilities" subject to paragraph (c)(2)(iii) of this section, must submit the application information required by paragraph (q) of this section, within the time periods established in paragraph (c)(2) of this section, using Form 2S or another form approved by the Director. All such applicants applying for EPA-issued permits must complete Form 2S.

* * * * *

(f) *Information requirements.* All applicants for NPDES permits, other than POTWs and other TWTDS, shall provide the following information to the Director, using the application form provided by the Director (additional information required of applicants is set forth in paragraphs (g) through (k) of this section).

* * * * *

(j) *Application requirements for new and existing POTWs.* Unless otherwise indicated, all POTWs shall provide, at a minimum, the information in this paragraph (j) to the Director, using Form 2A or another application form provided by the Director. The Director may waive any requirement of this paragraph if the Director has access to substantially identical information.

(1) *Basic application information.* All applicants shall provide the following information:

(i) *Facility information.* Name, mailing address, and location of the facility for which the application is submitted;

(ii) *Applicant information.* Name, mailing address, and telephone number of the applicant, and indication as to whether the applicant is the facility's owner, operator, or both;

(iii) *Existing environmental permits.* Identification of all environmental permits or construction approvals received or applied for (including dates) under any of the following programs:

(A) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA), subpart C of this part;

(B) UIC program under the Safe Drinking Water Act (SDWA);

(C) NPDES program under Clean Water Act (CWA);

(D) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(E) Nonattainment program under the Clean Air Act;

(F) National Emission Standards for Hazardous Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(G) Ocean dumping permits under the Marine Protection Research and Sanctuaries Act;

(H) Dredge or fill permits under section 404 of the CWA; and

(I) Other relevant environmental permits, including State permits;

(iv) *Population*. The name and population of each municipal entity served by the facility, including unincorporated connector districts;

(v) *Flow rate*. The facility's design flow rate and annual average daily flow rate for each of the previous 3 years;

(vi) *Collection system*. Identify type(s) of collection system(s) used by the treatment works (i.e., separate sanitary sewers or combined storm and sanitary sewers) and an estimate of the percent of sewer line that each type comprises;

(vii) *Inflow and infiltration*. The current average daily flow rate volume of inflow and infiltration, in gallons per day, and steps the facility is taking to minimize inflow and infiltration;

(viii) *Topographic map*. A topographic map (or other map if a topographic map is unavailable) extending at least one mile beyond property boundaries of the treatment plant, including all unit processes, and showing:

(A) Treatment plant area and unit processes;

(B) The pipes or other structures through which wastewater enters the treatment plant and the pipes or other structures through which treated wastewater is discharged from the treatment plant. Include outfalls from bypass piping, if applicable;

(C) Each well where fluids from the treatment plant are injected underground;

(D) Wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant within the map area;

(E) Sewage sludge management facilities (including on-site treatment, storage, and disposal sites) within the property boundaries; and

(F) Location at which waste classified as hazardous under RCRA enters the treatment plant by truck, rail, or dedicated pipe;

(ix) *Process flow diagram or schematic*.

(A) A diagram showing the processes of the treatment plant, including all bypass piping. This includes a water balance showing all treatment units, including disinfection, and showing daily average flow rates at influent and discharge points, and approximate daily flow rates between treatment units; and

(B) A narrative description of the diagram;

(x) *Bypasses*. The following information for each outfall that is a discharge from a bypass point:

(A) The actual or approximate number of wet-weather and dry-weather bypass incidents in the twelve months prior to the date of the permit application;

(B) The actual or approximate duration of each wet-weather or dry-weather bypass incident;

(C) The actual or approximate volume, in millions of gallons, of each wet-weather or dry-weather bypass incident; and

(D) The reason(s) why such bypasses occurred;

(xi) *Outfalls and other discharge or disposal methods*. The following information for outfalls to waters of the United States and other discharge or disposal methods:

(A) For effluent discharges to waters of the United States, the total number and types of outfalls (e.g. treated effluent, CSOs) to surface water;

(B) For wastewater discharged to surface impoundments:

(1) The location of each surface impoundment;

(2) The annual average daily volume discharged to each surface impoundment; and

(3) Whether the discharge is continuous or intermittent;

(C) For wastewater applied to the land:

(1) The location of each land application site;

(2) The size of each land application site, in acres;

(3) The annual average daily volume applied to each land application site, in gallons per day; and

(4) Whether land application is continuous or intermittent;

(D) For wastewater discharged to another facility:

(1) The means by which the discharge is transported;

(2) The name, mailing address, contact person, and phone number of the organization transporting the discharge, if the transport is provided by a party other than the applicant;

(3) The name, mailing address, contact person, phone number, and NPDES permit number (if any) of the receiving facility; and

(4) The average daily flow rate from this facility into the receiving facility, in millions of gallons per day; and

(E) For wastewater disposed of in a manner not included in paragraphs (j)(1)(ix) (A) through (D) of this section (e.g., underground percolation, underground injection):

(1) A description of the disposal method, including the location and size of each disposal site, if applicable;

(2) The annual average daily volume disposed of by this method, in gallons per day; and

(3) Whether disposal through this method is continuous or intermittent;

(xii) *Federal Indian reservations*. Information concerning whether the facility is located on a Federal Indian Reservation or whether the facility discharges to a receiving stream that flows through a Federal Indian Reservation; and

(xiii) *Scheduled improvements, schedules of implementation*. The following information regarding scheduled improvements:

(A) The outfall number of each outfall affected;

(B) A narrative description of each required improvement;

(C) Scheduled or actual dates of completion for the following:

(1) Commencement of construction;

(2) Completion of construction;

(3) Commencement of discharge; and

(4) Attainment of operational level; and

(D) A description of permits and clearances concerning other Federal and/or State requirements;

(2) *Information on effluent discharges*.

Each applicant must provide the following information for each outfall, including bypass points, through which effluent is discharged, as applicable:

(i) *Description of outfall*. The following information about each outfall:

(A) Outfall number;

(B) State, county, and city or town in which outfall is located;

(C) Latitude and longitude, to the nearest second;

(D) Distance from shore and depth below surface;

(E) Average daily flow rate, in million gallons per day;

(F) The following information for each outfall with a seasonal or periodic discharge:

(1) Number of times per year the discharge occurs;

(2) Duration of each discharge;

(3) Flow of each discharge; and

(4) Months in which discharge occurs; and

(G) Whether the outfall is equipped with a diffuser and the type (e.g., high-rate) of diffuser used;

(ii) *Description of receiving waters.* The following information (if known) for each outfall through which effluent is discharged to waters of the United States:

(A) Type (e.g., stream, river, lake, estuary, ocean) and name of receiving water;

(B) Name of watershed/river/stream system and United States Soil Conservation Service 14-digit watershed code;

(C) Name of State Management/River Basin and United States Geological Survey 8-digit hydrologic cataloging unit code; and

(D) Critical flow of receiving stream and total hardness of receiving stream at critical low flow (if applicable); and

(iii) *Description of treatment.* The following information describing the treatment provided for discharges from each outfall to waters of the United States:

(A) The highest level of treatment (e.g., primary, equivalent to secondary, secondary, advanced, other) that is provided for the discharge for each outfall and:

(1) Design biochemical oxygen demand (BOD₅ or CBOD₅) removal (percent);

(2) Design suspended solids (SS) removal (percent); and, where applicable;

(3) Design phosphorus (P) removal (percent);

(4) Design nitrogen (N) removal (percent); and

(5) Any other removals that an advanced treatment system is designed to achieve.

(B) A description of the type of disinfection used, and whether the treatment plant dechlorinates (if disinfection is accomplished through chlorination);

(3) *Effluent monitoring for specific parameters.* (i) As provided in paragraphs (j)(3) (ii) through (x) of this section all applicants shall submit to the Director effluent monitoring information for samples taken from each outfall through which effluent is discharged to waters of the United States, except for CSOs. The Director may allow applicants to submit sampling data for only one outfall on a case-by-case basis, where the applicant has two or more outfalls with substantially identical effluent;

(ii) All applicants must sample and analyze for the pollutants listed in Appendix J of this part, Table 1;

(iii) The following applicants must sample and analyze for the pollutants listed in Appendix J of this part, Table 2, and for any other pollutants for which the State or EPA have established water

quality standards applicable to the receiving waters:

(A) All POTWs with a design influent flow rate equal to or greater than one million gallons per day;

(B) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program; and

(C) Other POTWs, as required by the Director;

(iv) Unless otherwise required by the Director, applicants are not required to sample for the pollutants listed in Appendix J of this part, Table 3;

(v) The Director should require sampling for additional pollutants, as appropriate, on a case-by-case basis;

(vi) Applicants must provide data from a minimum of three samples taken within three years prior to the date of the permit application. Samples must be representative of the discharge from each outfall, and at least two samples should be at least four months, but no more than eight months apart. Existing data may be used, if available, in lieu of sampling done solely for the purpose of this application. The Director should require additional samples, as appropriate, on a case-by-case basis;

(vii) All existing data for pollutants specified in paragraphs (j)(3) (ii) through (v) of this section that is collected within three years of the application must be included with the pollutant data submitted by the applicant. If, however, the applicant samples for a specific pollutant on a monthly or more frequent basis, it is only necessary, for such pollutant, to provide all data collected within one year of the application;

(viii) Applicants must collect samples of effluent and analyze such samples for pollutants in accordance with analytical methods approved under 40 CFR part 136 unless an alternative is specified in the existing NPDES permit. When no analytical method is approved, applicants may use any suitable method and must provide a description of the method. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, fecal coliform, *E. coli*, and enterococci. For all other pollutants, 24-hour flow-weighted composite samples must be used. For a flow-weighted composite sample, only one analysis of the composite of aliquots is required. A single grab sample may be taken for effluent from holding ponds or other impoundments, so long as they have a retention time of greater than 24 hours;

(ix) The effluent monitoring data provided must include at least the following information for each parameter:

(A) Maximum daily discharge, expressed as concentration or mass, based upon actual sample values;

(B) Average daily discharge for all samples, expressed as concentration or mass, based upon actual sample values, and the number of samples used to obtain this value;

(C) The analytical method used; and

(D) The threshold level (i.e., method detection limit, minimum level, or other designated method endpoints) for the analytical method used; and

(x) Unless otherwise required by the Director, metals must be reported as total recoverable;

(4) *Effluent monitoring for whole effluent toxicity.* (i) All applicants shall provide an identification of any biological toxicity tests that the applicant knows or has reason to believe have been made during the three years prior to the date of the application on any of the applicant's discharges or on a receiving water in relation to a discharge.

(ii) As provided in paragraphs (j)(4) (iii) through (ix) of this section, the following applicants shall submit to the Director the results of valid whole effluent biological toxicity tests for acute or chronic toxicity for samples taken from each outfall through which effluent is discharged to surface waters, except for combined sewer overflows:

(A) All POTWs with design influent flow rate equal to or greater than one million gallons per day;

(B) All POTWs with approved pretreatment programs or POTWs required to develop a pretreatment program; and

(C) Other POTWs, as required by the Director, based on consideration of the following factors:

(1) The variability of the pollutants or pollutant parameters in the POTW effluent (based on chemical-specific information, the type of treatment plant, and types of industrial contributors);

(2) The ratio of effluent flow to receiving stream flow;

(3) Existing controls on point or non-point sources, including total maximum daily load calculations for the receiving stream segment and the relative contribution of the POTW;

(4) Receiving stream characteristics, including possible or known water quality impairment, and whether the POTW discharges to a coastal water, one of the Great Lakes, or a water designated as an outstanding natural resource water; or

(5) Other considerations (including, but not limited to, the history of toxic impacts and compliance problems at the POTW) that the Director determines

could cause or contribute to adverse water quality impacts.

(iii) Where the POTW has two or more outfalls with substantially identical effluent discharging to the same receiving stream segment, the Director may allow applicants to submit whole effluent toxicity data for only one outfall on a case-by-case basis.

(iv) Each applicant required to perform whole effluent biological toxicity testing pursuant to paragraph (j)(4)(ii) of this section shall provide the results of a minimum of four quarterly tests for a year. Applicants shall conduct tests with multiple species (no less than two species; e.g., fish, invertebrate, plant), and test for acute or chronic toxicity, depending on the range of receiving water dilution. It is recommended that applicants conduct acute or chronic testing based on the following dilutions:

(A) Acute toxicity testing if the dilution of the effluent is greater than 1000:1 at the edge of the mixing zone;

(B) Acute or chronic toxicity testing if the dilution of the effluent is between 100:1 and 1000:1 at the edge of the mixing zone. Acute testing may be more appropriate at the higher end of this range (1000:1), and chronic testing may be more appropriate at the lower end of this range (100:1); and

(C) Chronic testing if the dilution of the effluent is less than 100:1 at the edge of the mixing zone.

(v) Each applicant required to perform whole effluent biological toxicity testing pursuant to paragraph (j)(4)(ii) of this section shall provide the number of chronic or acute whole effluent toxicity tests that have been conducted since the last permit reissuance.

(vi) Provide the results using the form provided by the Director, or test summaries if available and comprehensive, for each whole effluent toxicity test conducted pursuant to paragraph (j)(4)(ii) of this section for which such information has not been reported previously to the Director.

(vii) Whole effluent toxicity testing conducted pursuant to paragraph (j)(4)(ii) of this section shall be conducted using methods approved under 40 CFR part 136.

(viii) For biomonitoring data submitted to the Director within three years prior to the date of the application, applicants must provide the dates on which the data were submitted and a summary of the results.

(ix) Each POTW required to perform whole effluent biological testing pursuant to paragraph (j)(4)(ii) of this section must provide any information on the cause of toxicity and written details of any toxicity reduction

evaluation conducted, if any whole effluent toxicity test conducted within the past three years revealed toxicity.

(5) *Industrial discharges and pretreatment.* Applicants must submit the information in paragraphs (j)(5)(i) through (iii) of this section, as applicable, regarding industrial user discharges to the POTW.

(i) *General information.* General information on industrial users.

(A) Number of significant industrial users (SIUs) and categorical industrial users (CIUs) discharging to the POTW;

(B) Total average daily flow rate from all industrial (non-domestic) users, from SIUs, and from all CIUs discharging to the POTW; and

(C) Estimated percent of total influent contributed by all industrial (non-domestic) users, by SIUs only, by CIUs only, and by domestic sources discharging to the POTW.

(ii) *Pretreatment program and local limits.* POTWs with an approved pretreatment program under 40 CFR part 403 shall provide information concerning pretreatment program modifications that are required to be submitted but have not been approved in accordance with 40 CFR 403.18.

(iii) *Significant industrial users.* POTWs with one or more significant industrial users (SIUs) shall provide the following information for each SIU, as defined at 40 CFR 403.3(t), that discharges to the POTW:

(A) Name and mailing address;

(B) Description of all industrial processes that affect or contribute to the SIU's discharge;

(C) Principal products and raw materials of the SIU;

(D) Average daily volume of wastewater discharged, indicating the amount attributable to process flow and non-process flow;

(E) Whether the SIU is subject to local limits;

(F) Whether the SIU is subject to categorical standards, and if so, under which category(ies) and subcategory(ies); and

(G) Whether any problems at the POTW (e.g., upsets, pass through, interference) have been attributed to the SIU in the past three years;

(6) *Discharges from hazardous waste generators and from waste cleanup or remediation sites.* POTWs receiving RCRA, CERCLA, or RCRA Corrective Action wastes or wastes generated at another type of cleanup or remediation site must provide the following information:

(i) *RCRA hazardous waste.* If the POTW receives by truck, rail, or dedicated pipe any wastes that are regulated as RCRA hazardous wastes

pursuant to 40 CFR part 261, or authorized State, or if it is expected to receive such wastes during the life of the permit, the applicant must report the following:

(A) The method by which the waste is received (i.e., whether by truck, rail, or dedicated pipe); and

(B) The hazardous waste number and amount received annually of each hazardous waste;

(ii) *CERCLA wastewaters.* If the POTW receives wastewaters that originate from response activities undertaken pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), or if it is expected to receive such wastewaters during the life of the permit, the applicant must report the following:

(A) The identity and description of the site(s) at which the wastewater originates or is expected to originate;

(B) The identities of the hazardous constituents in the wastewater; and

(C) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW;

(iii) *RCRA corrective action wastewaters.* If the POTW receives wastewaters that originate from remedial activities undertaken pursuant to sections 3004(u) or 3008(h) of RCRA, or authorized State, or if it is expected to receive such wastewaters during the life of the permit, the applicant must report the following:

(A) The identity and description of the facility(ies) at which the wastewater originates or is expected to originate;

(B) The identities of the hazardous constituents in the wastewater; and

(C) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW; and

(iv) *Wastewaters from other remedial activities.* If the POTW receives wastewaters that originate from remedial activities other than those in paragraphs (j)(6) (ii) and (iii) of this section, the applicant shall provide a written description that includes the following information:

(A) The identity and description of the facility(ies) at which the wastewater originates or is expected to originate;

(B) The identities of the hazardous constituents in the wastewater; and

(C) The extent of treatment, if any, the wastewater receives or will receive before entering the POTW;

(7) *Combined sewer overflows.* Each applicant with combined sewer systems shall provide the following information:

(i) *Combined sewer system information.* The following information regarding the combined sewer system:

(A) *CSO discharge points.* The number of combined sewer overflow

(CSO) discharge points in the combined sewer system to be covered by the application;

(B) *System map*. A map indicating the location of the following:

- (1) All CSO discharge points;
- (2) Sensitive use areas potentially affected by CSOs (e.g., beaches, drinking water supplies, shellfish beds, sensitive aquatic ecosystems, and outstanding natural resource waters); and
- (3) Waters supporting threatened and endangered species potentially affected by CSOs;

(C) *System diagram*. A diagram of the combined sewer collection system that includes the following information:

- (1) The location of major sewer trunk lines, both combined and separate sanitary;
- (2) The locations of points where separate sanitary sewers feed into the combined sewer system;
- (3) In-line and off-line storage structures;
- (4) The locations of flow-regulating devices; and
- (5) The locations of pump stations; and

(D) *System evaluation*. A list of studies, including modeling studies, hydraulic studies, past monitoring efforts, and facility plans, that have been performed on the collection system since the last permit application; and

(ii) *Information on CSO outfalls*. The following information for each CSO discharge point covered by the permit application:

- (A) *Description of outfall*. The following information on each outfall:
- (1) Outfall number;
 - (2) State, county, and city or town in which outfall is located;
 - (3) Latitude and longitude, to the nearest second; and
 - (4) Distance from shore and depth below surface;

(B) *Monitoring*. Indicate if any of the following were monitored in the past year for this CSO and provide the results of this monitoring:

- (1) Rainfall;
 - (2) CSO flow volume;
 - (3) CSO water quality;
 - (4) Receiving water quality; and
 - (5) The number of storm events;
- (C) *CSO incidents*. The following information about CSO incidents:
- (1) The number of incidents in the past year;
 - (2) The average duration per incident;
 - (3) The average volume per CSO incident; and
 - (4) The minimum rainfall that caused a CSO incident in the last year;

(D) *Description of receiving waters*. The following information about receiving waters:

(1) Name and type of receiving water (e.g., stream/river, lake/pond, estuary, ocean);

(2) Name of watershed/stream system and the United States Soil Conservation Service watershed (14-digit) code (if known); and

(3) Name of State Management/River Basin and the United States Geological Survey hydrologic cataloging unit (8-digit) code (if known); and

(E) *CSO operations*. The following information concerning CSO operations:

(1) Whether the CSO includes contributions from significant industrial users; and

(2) A description of any known water quality impacts on the receiving water caused by the CSO (e.g., permanent or intermittent beach closings, permanent or intermittent shellfish bed closings, fish kills, fish advisories, other recreational loss, or exceedance of any applicable State water quality standard);

(8) *Contractors*. All applicants shall provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility; and

(9) *Signature*. All applications shall be signed by a certifying official in compliance with § 122.22.

* * * * *

(q) *Sewage sludge management*. All treatment works treating domestic sewage, except "sludge-only facilities" subject to paragraph (c)(2)(iii) of this section, shall provide the information in this paragraph to the Director, using Form 2S or another form approved by the Director. The Director may waive any requirement of this paragraph if the Director has access to substantially identical information.

(1) *Facility information*. All applicants shall submit the following information:

(i) The name, mailing address, and location of the treatment works treating domestic sewage for which the application is submitted;

(ii) The facility's latitude and longitude to the nearest second, and method of determination;

(iii) Whether the facility is a Class I Sludge Management Facility;

(iv) The design influent flow rate (in million gallons per day); and

(v) The total population served;

(2) *Applicant information*. All applicants shall submit the following information:

(i) The name, mailing address, and telephone number of the applicant;

(ii) Indication whether the applicant is the owner, operator, or both; and

(iii) The applicant's status as Federal, State, private, public, or other entity;

(3) *Permit information*. All applicants shall submit the facility's NPDES permit number, if applicable, and a listing of all other Federal, State, and local permits or construction approvals received or applied for under any of the following programs:

(i) Hazardous Waste Management program under the Resource Conservation and Recovery Act (RCRA);

(ii) UIC program under the Safe Drinking Water Act (SDWA);

(iii) NPDES program under the Clean Water Act (CWA);

(iv) Prevention of Significant Deterioration (PSD) program under the Clean Air Act;

(v) Nonattainment program under the Clean Air Act;

(vi) National Emission Standards for Hazardous Air Pollutants (NESHAPS) preconstruction approval under the Clean Air Act;

(vii) Dredge or fill permits under section 404 of CWA; and

(viii) Other relevant environmental permits, including State or local permits;

(4) *Federal Indian Reservations*. All applicants shall identify any generation, treatment, storage, land application, or disposal of sewage sludge that occurs on Federal Indian Reservations;

(5) *Topographic map*. All applicants shall submit a topographic map (or other map if a topographic map is unavailable) extending one mile beyond property boundaries of the facility and showing the following information:

(i) All sewage sludge management facilities, including use and disposal sites;

(ii) All water bodies; and

(iii) Wells used for drinking water listed in public records or otherwise known to the applicant within 1/4 mile of the facility property boundaries;

(6) *Sewage sludge handling*. All applicants shall submit a line drawing and/or a narrative description that identifies all sewage sludge management practices employed during the term of the permit, including all units used for collecting, dewatering, storing, or treating sewage sludge, the destination(s) of all liquids and solids leaving each such unit, and all processes used for pathogen reduction and vector attraction reduction;

(7) *Sewage sludge quality*. (i) If the applicant is a "Class I sludge management facility," the applicant shall submit the results of a toxicity characteristic leaching procedure (TCLP), as described in 40 CFR part 261, conducted in the last five years to determine whether the sewage sludge is a hazardous waste.

(ii) The applicant shall submit sewage sludge monitoring data for the

parameters indicated in paragraphs (q)(7)(ii) (A) through (B) of this section. Monitoring data shall be two years old or less. The data for each parameter shall include the concentration in sewage sludge (mg/kg dry weight), the sample date(s), the analytical method, and the minimum detection level for the analysis.

(A) "Class I Sludge Management Facilities," as defined in § 122.2, shall submit sewage sludge monitoring data for TKN, ammonia, nitrate, total phosphorus, the pollutants in Appendix J of this part, Tables 2 and 3, and any other parameters for which limits in sewage sludge have been established in 40 CFR part 503 on the date of permit application.

(B) All other facilities required to apply under this section shall submit sewage sludge monitoring data for TKN, ammonia, nitrate, total phosphorus and those pollutants for which limits in sewage sludge have been established in 40 CFR part 503 on the date of permit application;

(8) *Preparation of sewage sludge.* If the applicant is a "person who prepares" sewage sludge, as defined at 40 CFR 503.9(r), the applicant shall provide the following information:

(i) If the applicant's facility generates sewage sludge, the total dry metric tons per 365-day period generated at the facility;

(ii) If the applicant's facility receives sewage sludge from another facility, the following information for each facility from which sewage sludge is received:

(A) The name, mailing address, and location of the other facility;

(B) The total dry metric tons per 365-day period received from the other facility; and

(C) A description of any treatment processes occurring at the other facility, including blending activities and treatment to reduce pathogens or vector attraction characteristics;

(iii) If the applicant's facility changes the quality of sewage sludge through blending, treatment, or other activities, the following information:

(A) Whether the Class A pathogen reduction requirements in 40 CFR 503.32(a) or the Class B pathogen reduction requirements in 40 CFR 503.32(b) are met, and a description of any treatment processes used to reduce pathogens in sewage sludge;

(B) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(1) through (b)(8) are met, and a description of any treatment processes used to reduce vector attraction properties in sewage sludge; and

(C) A description of any other blending, treatment, or other activities

that change the quality of sewage sludge;

(iv) If sewage sludge from the applicant's facility meets the ceiling concentrations in 40 CFR 503.13(b)(1), the pollutant concentrations in 40 CFR 503.13(b)(3), the Class A pathogen requirements in 40 CFR 503.32(a), and one of the vector attraction reduction requirements in 40 CFR 503.33(b)(1) through (b)(8), and if the sewage sludge is applied to the land, the applicant shall provide the total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is applied to the land;

(v) If sewage sludge from the applicant's facility is sold or given away in a bag or other container for application to the land, and the sewage sludge is not subject to paragraph (q)(8)(iv) of this section, the applicant shall provide the following information:

(A) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that is sold or given away in a bag or other container for application to the land; and

(B) A copy of all labels or notices that accompany the sewage sludge being sold or given away;

(vi) If sewage sludge from the applicant's facility is provided to another "person who prepares," as defined at 40 CFR 503.9(r), and the sewage sludge is not subject to paragraph (q)(8)(iv) of this section, the applicant shall provide the following information for each facility receiving the sewage sludge:

(A) The name and mailing address of the receiving facility;

(B) The total dry metric tons per 365-day period of sewage sludge subject to this paragraph that the applicant provides to the receiving facility;

(C) A description of any treatment processes occurring at the receiving facility, including blending activities and treatment to reduce pathogens or vector attraction characteristic;

(D) A copy of the notice and necessary information that the applicant is required to provide the receiving facility under 40 CFR 503.12(g); and

(E) If the receiving facility places sewage sludge in bags or containers for sale or give-away to application to the land, a copy of any labels or notices that accompany the sewage sludge;

(9) *Land application of bulk sewage sludge.* If sewage sludge from the applicant's facility is applied to the land in bulk form, and is not subject to § 122.21(q)(8)(iv), (v), or (vi), the applicant shall provide the following information:

(i) The total dry metric tons per 365-day period of sewage sludge subject to

this paragraph (q)(9) that is applied to the land;

(ii) If any land application sites are located in States other than the State where the sewage sludge is prepared, a description of how the applicant will notify the permitting authority for the State(s) where the land application sites are located;

(iii) The following information for each land application site that has been identified at the time of permit application:

(A) The name (if any), and location for the land application site;

(B) The name, mailing address, and telephone number of the site owner, if different from the applicant;

(C) The name, mailing address, and telephone number of the person who applies sewage sludge to the site, if different from the applicant;

(D) Whether the site is agricultural land, forest, a public contact site, or a reclamation site, as such site types are defined under 40 CFR 503.11;

(E) The type of vegetation grown on the site, if known, and the nitrogen requirement for this vegetation;

(F) Whether either of the vector attraction reduction options of 40 CFR 503.33(b)(9) or (b)(10) is met at the site, and a description of any procedures employed at the time of use to reduce vector attraction properties in sewage sludge; and

(G) Any available ground-water monitoring data, with a description of the well locations and approximate depth to ground water, for the land application site;

(iv) The following information for each land application site that has been identified at the time of permit application, if the applicant intends to apply bulk sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site:

(A) Whether the applicant has contacted the permitting authority in the State where the bulk sewage sludge subject to 40 CFR 503.13(b)(2) will be applied, to ascertain whether bulk sewage sludge subject to 40 CFR 503.13(b)(2) has been applied to the site on or since July 20, 1993, and if so, the name of the permitting authority and the name and phone number of a contact person at the permitting authority;

(B) Identification of facilities other than the applicant's facility that have sent, or are sending, sewage sludge subject to the cumulative pollutant loading rates in 40 CFR 503.13(b)(2) to the site since July 20, 1993, if, based on the inquiry in paragraph (q)(9)(iv)(A) of this section, bulk sewage sludge subject to cumulative pollutant loading rates in

40 CFR 503.13(b)(2) has been applied to the site since July 20, 1993;

(v) If not all land application sites have been identified at the time of permit application, the applicant shall submit a land application plan that, at a minimum:

(A) Describes the geographical area covered by the plan;

(B) Identifies the site selection criteria;

(C) Describes how the site(s) will be managed;

(D) Provides for advance notice to the permit authority of specific land application sites and reasonable time for the permit authority to object prior to land application of the sewage sludge; and

(E) Provides for advance public notice as required by State and local law, but in all cases requires notice to landowners and occupants adjacent to or abutting the proposed land application site;

(10) *Surface disposal.* If sewage sludge from the applicant's facility is placed on a surface disposal site, the applicant shall provide the following information:

(i) The total dry metric tons of sewage sludge from the applicant's facility that is placed on surface disposal sites per 365-day period;

(ii) The following information for each surface disposal site receiving sewage sludge from the applicant's facility that the applicant does *not* own or operate:

(A) The site name or number, contact person, mailing address, and telephone number for the surface disposal site; and

(B) The total dry metric tons from the applicant's facility per 365-day period placed on the surface disposal site; and

(iii) The following information for each active sewage sludge unit at each surface disposal site that the applicant owns or operates:

(A) The name or number and the location of the active sewage sludge unit;

(B) The total dry metric tons placed on the active sewage sludge unit per 365-day period;

(C) The total dry metric tons placed on the active sewage sludge unit over the life of the unit;

(D) A description of any liner for the active sewage sludge unit, including whether it has a maximum permeability of 1×10^{-7} cm/sec;

(E) A description of any leachate collection system for the active sewage sludge unit, including the method used for leachate disposal, and any Federal, State, and local permit number(s) for leachate disposal;

(F) If the active sewage sludge unit is less than 150 meters from the property

line of the surface disposal site, the actual distance from the unit boundary to the site property line;

(G) The remaining capacity (dry metric tons) for the active sewage sludge unit;

(H) The date on which the active sewage sludge unit is expected to close, if such a date has been identified;

(I) The following information for any other facility that sends sewage sludge to the active sewage sludge unit:

(1) The name, contact person, and mailing address of the facility; and

(2) Available information regarding the quality of the sewage sludge received from the facility, including any treatment at the facility to reduce pathogens or vector attraction characteristics;

(J) Whether any of the vector attraction reduction options of 40 CFR 503.33(b)(9) through (b)(11) is met at the active sewage sludge unit, and a description of any procedures employed at the time of disposal to reduce vector attraction properties in sewage sludge;

(K) The following information, as applicable to any ground-water monitoring occurring at the active sewage sludge unit:

(1) A description of any ground-water monitoring occurring at the active sewage sludge unit;

(2) Any available ground-water monitoring data, with a description of the well locations and approximate depth to ground water;

(3) A copy of any ground-water monitoring plan that has been prepared for the active sewage sludge unit; and

(4) A copy of any certification that has been obtained from a qualified ground-water scientist that the aquifer has not been contaminated; and

(L) If site-specific pollutant limits are being sought for the sewage sludge placed on this active sewage sludge unit, information to support such a request;

(11) *Incineration.* If sewage sludge from the applicant's facility is fired in a sewage sludge incinerator, the applicant shall provide the following information:

(i) The total dry metric tons of sewage sludge from the applicant's facility that is fired in sewage sludge incinerators per 365-day period;

(ii) The following information for each sewage sludge incinerator firing the applicant's sewage sludge that the applicant does *not* own or operate:

(A) The name and/or number, contact person, mailing address, and telephone number of the sewage sludge incinerator; and

(B) The total dry metric tons from the applicant's facility per 365-day period fired in the sewage sludge incinerator;

(iii) The following information for each sewage sludge incinerator that the applicant owns or operates:

(A) The name and/or number and the location of the sewage sludge incinerator;

(B) The total dry metric tons per 365-day period fired in the sewage sludge incinerator;

(C) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Beryllium in 40 CFR part 61 will be achieved;

(D) Information, test data, and documentation of ongoing operating parameters indicating that compliance with the National Emission Standard for Mercury in 40 CFR part 61 will be achieved;

(E) The dispersion factor for the sewage sludge incinerator, as well as modeling results and supporting documentation;

(F) The control efficiency for parameters regulated in 40 CFR 503.43, as well as performance test results and supporting documentation;

(G) Information used to calculate the risk specific concentration (RSC) for chromium, including the results of incinerator stack tests for hexavalent and total chromium concentrations, if the applicant is requesting a chromium limit based on a site-specific RSC value;

(H) The concentration (ppm) of total hydrocarbons (THC) or Carbon Monoxide (CO) in the exit gas for the sewage sludge incinerator, as well as supporting documentation, both before and after correction for zero percent moisture and correction to seven percent oxygen as required in 40 CFR 503.44;

(I) The oxygen concentration in the sewage sludge incinerator stack exit gas;

(J) Information used to determine the moisture content of the sewage sludge incinerator stack exit gas;

(K) The type of sewage sludge incinerator;

(L) The combustion temperature, as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies;

(M) The following information on sewage sludge feed rate:

(1) Sewage sludge feed rate in dry metric tons per day;

(2) Identification of whether the feed rate submitted is average use or maximum design; and

(3) A description of how the feed rate was calculated;

(N) The incinerator stack height in meters for each stack, including identification of whether actual or creditable stack height was used;

(O) The operating parameters for the sewage sludge incinerator air pollution control device(s), as obtained during the performance test of the sewage sludge incinerator to determine pollutant control efficiencies;

(P) Identification of the monitoring equipment in place, including (but not limited to) equipment to monitor the following:

(1) Total hydrocarbons or Carbon Monoxide;

(2) Percent oxygen;

(3) Percent moisture; and

(4) Combustion temperature; and

(Q) A list of all air pollution control equipment used with this sewage sludge incinerator;

(12) *Disposal in a municipal solid waste landfill.* If sewage sludge from the applicant's facility is sent to a municipal solid waste landfill (MSWLF), the applicant shall provide the following information for each MSWLF to which sewage sludge is sent:

(i) The name, contact person, mailing address, location, and all applicable permit numbers of the MSWLF;

(ii) The total dry metric tons per 365-day period sent from this facility to the MSWLF;

(iii) A determination of whether the sewage sludge meets applicable requirements for disposal of sewage sludge in a MSWLF, including the results of the paint filter liquids test and any additional requirements that apply on a site-specific basis; and

(iv) Information, if known, indicating whether the MSWLF complies with criteria set forth in 40 CFR Part 258;

(13) *Contractors.* All applicants shall provide the name, mailing address, telephone number, and responsibilities of all contractors responsible for any operational or maintenance aspects of the facility;

(14) *Other information.* At the request of the permitting authority, the applicant shall provide any other information necessary to determine the appropriate standards for permitting under 40 CFR part 503, and shall provide any other information necessary to assess the sewage sludge use and disposal practices, determine whether to issue a permit, or identify appropriate permit requirements; and

(15) *Signature.* All applications shall be signed by a certifying official in compliance with § 122.22.

7. Part 122 is amended by adding Appendix J to read as follows:

Appendix J to Part 122—NPDES Permit Testing Requirements for Publicly Owned Treatment Works (§ 122.21(j)) and Treatment Works Treating Domestic Sewage (§ 122.21(q))

Table 1—Effluent Parameters for All POTWS

Ammonia (as N)
Biochemical oxygen demand (BOD-5 or CBOD-5)
Chlorine (total residual, TRC)
Dissolved oxygen
E. Coli
Enterococci
Fecal coliform
Flow Rate
Hardness (as CaCO₃)
Kjeldahl nitrogen
Nitrate/Nitrite
Oil and grease
pH
Phosphorus
Temperature
Total dissolved solids
Total suspended solids

Table 2—Effluent and Sewage Sludge Parameters for Selected POTWS and Treatment Works Treating Domestic Sewage

Metals (Total Recoverable), Cyanide and Total Phenols

Antimony
7440-36-0
Arsenic
7440-38-2
Beryllium
7440-41-7
Cadmium
7440-43-9
Chromium
7440-47-3
Copper
7440-50-8
Lead
7439-92-1
Mercury
7439-97-6
Nickel
7440-02-0
Selenium
7782-49-2
Silver
7440-22-4
Thallium
7440-28-0
Zinc
7440-66-6
Cyanide
57-12-5
Phenols, total

Volatile Organic Compounds

Acrolein
107-02-8
Acrylonitrile
107-13-1
Benzene
271-43-2
Bromoform
75-25-2
Carbon tetrachloride
56-23-5
Chlorobenzene

108-90-7
Chlorodibromomethane
124-48-1
Chloroethane
75-00-3
2-chloroethylvinyl ether
110-75-8
Chloroform
67-66-3
Dichlorobromomethane
75-27-4
1,1-dichloroethane
75-34-3
1,2-dichloroethane
107-06-2
Trans-1,2-dichloroethylene
156-60-5
1,1-dichloroethylene
75-35-4
1,2-dichloropropane
78-87-5
1,3-dichloropropene
542-75-6
Ethylbenzene
100-41-4
Methyl bromide
74-83-9
Methyl chloride
74-87-3
Methylene chloride
75-09-2
1,1,2,2-tetrachloroethane
630-20-6
Tetrachloroethylene
127-18-4
Toluene
108-88-3
1,1,1-trichloroethane
71-55-6
1,1,2-trichloroethane
79-00-5
Trichloroethylene
79-01-6
Vinyl chloride
75-01-4

Acid-extractable compounds

P-chloro-m-cresol
59-50-7
2-chlorophenol
95-57-8
2,4-dichlorophenol
120-83-2
222,4-dimethylphenol
105-67-9
4,6-dinitro-o-cresol
534-52-1
2,4-dinitrophenol
51-28-5
2-nitrophenol
887-5-5
4-nitrophenol
100-02-7
Pentachlorophenol
87-86-5
Phenol
108-295-2
2,4,6-trichlorophenol
88-06-2

Base-Neutral Compounds

Acenaphthene
83-32-9
Acenaphthylene
208-96-8
Anthracene

120-12-7
Benzidine
92-87-5
Benzo(a)anthracene
56-55-3
Benzo(a)pyrene
50-32-8
3,4 benzofluoranthene
205-99-2
Benzo(ghi)perylene
191-24-2
Benzo(k)fluoranthene
207-08-9
Bis (2-chloroethoxy) methane
111-91-1
Bis (2-chloroethyl) ether
111-44-4
Bis (2-chloroisopropyl) ether
108-60-1
Bis (2-ethylhexyl) phthalate
117-81-7
4-bromophenyl phenyl ether
101-55-3
Butyl benzyl phthalate
85-68-7
2-chloronaphthalene
91-58-7
4-chlorophenyl phenyl ether
7005-72-3
Chrysene
218-01-9
Di-n-butyl phthalate
84-74-2
Di-n-octyl phthalate
117-84-0
Dibenzo(a,h)anthracene
53-70-3
1,2-dichlorobenzene
95-50-1
1,3-dichlorobenzene
541-73-1
1,4-dichlorobenzene
106-46-7
3,3'-dichlorobenzidine
91-94-1
Diethyl phthalate
84-66-2
Dimethyl phthalate
131-11-3
2,4-dinitrotoluene
121-14-2
2,6-dinitrotoluene
606-20-2
1,2-diphenylhydrazine
122-66-7
Fluoranthene
206-44-0
Fluorene
86-73-7
Hexachlorobenzene
118-74-1
Hexachlorobutadiene
87-68-3
Hexachlorocyclopentadiene
77-47-4
Hexachloroethane
67-72-1
Indeno(1,2,3-cd)pyrene
193-39-5
Isophorone
78-59-1
Naphthalene
91-20-3
Nitrobenzene
98-95-3
N-nitrosodi n-propylamine

621-64-7
N-nitrosodimethylamine
62-75-9
N-nitrosodiphenylamine
86-30-6
Phenanthrene
85-01-8
Pyrene
129-00-0
1,2,4-trichlorobenzene
120-82-1
Table 3—Other Effluent and Sewage
Sludge Parameters for Treatment
Works Treating Domestic Sewage and
Selected POTWS
Metals
Molybdenum
7439-98-7
Pesticides
Aldrin
309-00-2
Alpha-BHC
319-84-6
Beta-BHC
319-85-7
Delta-BHC
319-86-8
Gamma-BHC
58-89-9
Chlordane
57-74-9
4,4'-DDD
72-54-8
4,4'-DDE
72-55-9
4,4'-DDT
50-29-3
Dieldrin
60-57-1
Alpha-endosulfan
959-98-8
Beta-endosulfan
33213-65-9
Endosulfan sulfate
1031-07-8
Endrin
72-20-8
Endrin aldehyde
7421-93-4
Heptachlor
76-44-8
Heptachlor epoxide
1024-57-3
PCB-1016 (Aroclor 1016)
12674-11-2
PCB-1221 (Aroclor 1221)
11104-28-2
PCB-1232 (Aroclor 1232)
11141-16-5
PCB-1242 (Aroclor 1242)
53469-21-9
PCB-1248 (Aroclor 1248)
12672-29-6
PCB-1254 (Aroclor 1254)
11097-69-1
PCB-1260 (Aroclor 1260)
11096-82-5
Toxaphene
8001-35-2
Other
2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)
1746-01-6

PART 123—STATE PROGRAM REQUIREMENTS

8a. The authority citation for part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

8b. Section 123.25 is amended by revising paragraph (a)(4) to read as follows:

§ 123.25 Requirements for permitting.

(a) * * *

(4) Sections 122.21(a), (b), (c)(2), (e) through (k), (m) through (p), and (q)—(Application for a permit);

* * * * *

PART 403—GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

9. The authority citation for part 403 continues to read as follows:

Authority: Sec. 54(c)(2) of the Clean Water Act of 1977, (Pub. L. 95-217) sections 204(b)(1)(C), 208(b)(2)(C)(iii), 301(b)(1)(A)(ii), 301(b)(2)(C), 301(h)(5), 301(i)(2), 304(e), 304(g), 307, 308, 309, 402(b), 405, and 501(a) of the Federal Water Pollution Control Act (Pub. L. 92-500) as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (Pub. L. 100-4).

10. Section 403.8 is amended by revising paragraph (f)(4) to read as follows:

§ 403.8 Pretreatment Program Requirements: Development and Implementation by POTW.

* * * * *

(f) * * *

(4) The POTW shall:

(i) Develop local limits as required in § 403.5(c)(1), or demonstrate that they are not necessary; and

(ii) Following permit issuance or reissuance, provide a written technical evaluation of the need to revise local limits under 40 CFR 403.5(c)(1).

* * * * *

PART 501—STATE SLUDGE MANAGEMENT PROGRAM REGULATIONS

11. The authority citation for part 501 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

12. Section 501.15 is amended by removing the reference “§ 501.15(a)(2)(ix)” in paragraphs (d)(4) introductory text, (d)(4)(i)(C), and (d)(5)(ii)(B) and adding in its place “§ 122.21(q)(9)(v)”, and by revising paragraph (a)(2) to read as follows:

§ 501.15 Requirements for permitting.

(a) * * *

(2) *Information requirements.* All treatment works treating domestic sewage shall submit to the Director the

information listed at 40 CFR 122.21 (q) within the time frames established in paragraph (d)(1)(ii) of this section.

* * * * *

Note: The following form will not appear in the Code of Federal Regulations.

BILLING CODE 6560-50-P